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Howard A. Belodoff
Attorney at Law
IDAHO LEGAL AID SERVICES, INC.
310 N. 5th Street
P.O. Box 913
Boise, ID 83701-0913
(208) 336-8980
ISB # 2290

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

FORT HALL LANDOWNERS ALLIANCE,)	
INC., ELI MOSHO, and)	
FRANK PAPSE, SR.,)	CASE NO. 99-052-E-BLW
)	
Plaintiffs,)	
)	
vs.)	AMENDED COMPLAINT
)	
BUREAU OF INDIAN AFFAIRS,)	
UNITED STATES DEPARTMENT OF)	
THE INTERIOR, and BRUCE BABBITT,)	
Secretary, U.S. Department of)	
The Interior,)	
)	
Defendants.)	

PRELIMINARY STATEMENT

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, to order the production of agency records, consisting of all records of the names and mailing addresses of the landowners of allotments located on the Fort Hall Indian Reservation which are within a fifty (50) year right-of-way

AMENDED COMPLAINT - Page 1

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previously given to Idaho Power Company in 1946 for the construction of an electrical power transmission line. The individual Plaintiffs also seek relief declaring and ordering the Defendant to perform its statutory and regulatory duties pursuant to 5 U.S.C. §§ 552, *et seq.*, 25 U.S.C. §§ 323-325, 25 C.F.R. §§ 169, *et. seq.* and its fiduciary obligations as trustee of the individual Plaintiffs' allotted lands pursuant to common law trust principles. The individual Plaintiffs also seek civil damages under the Privacy Act, 5 U.S.C. § 552a(g).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA); 5 U.S.C § 552a(g)(5) (Privacy Act); 25 U.S.C. § 345 (Indian allotments); 28 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), and 1353 (Indian allotments). Venue is proper in the District of Idaho because the Plaintiffs reside on the Fort Hall Indian Reservation located within the state of Idaho, the Fort Hall Landowners Alliance has its place of business on the Fort Hall Indian Reservation, and this action arises upon the Fort Hall Indian Reservation within the state of Idaho. Venue is properly vested in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(b) and (e).

PARTIES

3. Plaintiff Fort Hall Landowners Alliance, Inc. is a nonprofit corporation whose members are tribal members of the Shoshone-Bannock Tribes or any other federally recognized Tribe. The Fort Hall Landowners Alliance, Inc. is an educational and

advocacy organization devoted to improving the general welfare and economic status of tribal members through proper management of individually owned trust land on the Fort Hall Indian Reservation in accordance with federal law and proper environmental and conservation practices. In this capacity, it provides direct representation and advice to Indian landowners of trust land located on the Fort Hall Indian Reservation in the negotiation of leases and rights-of-way with the Bureau of Indian Affairs and lessees. The Fort Hall Landowners Alliance seeks to educate tribal members to achieve the best use of land and assist Indian landowners so they can become self-sufficient.

4. Plaintiff Eli Mosho is a member of the Shoshone-Bannock Tribes. Plaintiff Mosho is a member of the Fort Hall Landowners Alliance who resides on the Fort Hall Indian Reservation. Plaintiff Mosho owns a 100% interest in Fort Hall Allotment No. 1584. His major source of income is the rental income he receives from the land leases on the Fort Hall Indian Reservation.

5. Plaintiff Frank Papse, Sr. is a member of the Shoshone-Bannock Tribes who resides on the Fort Hall Indian Reservation. Plaintiff Papse is a member of the Fort Hall Landowners Alliance and is the chairman of its governing board. Plaintiff Papse owns an undivided interest in Fort Hall Allotment No. 1197. His major source of income is the rental income he receives from the land leases on the Fort Hall Indian Reservation.

6. Defendant Bureau of Indian Affairs is an agency of the United States, Department of the Interior, and it has possession of and control over the land records which were disclosed to

Idaho Power Company and which the Plaintiffs seek. The Bureau of Indian Affairs is the agency responsible for the granting of rights-of-way under federal law and has a fiduciary obligation to the Indian owners of land held in trust by the United States government.

7. Defendant Bruce Babbitt is Secretary of the Interior and chief officer of the Department of the Interior, and as such is charged by law with carrying out the statutory, regulatory, and fiduciary duties and responsibilities of the United States as a trustee for the individual Plaintiffs and all other owners of Indian trust land.

FACTS

8. On November 6, 1942, the Superintendent of the Fort Hall Indian Reservation (hereinafter Superintendent) received authority from the Assistant Secretary of the United States Department of the Interior for Idaho Power Company to construct an electrical transmission line "across tribal and allotted lands with consent of the tribe and individual Indian owners respectively subject to advance deposit [sic] double estimated damages and compliance [sic] applicable laws and regulations." Exhibit 1. The Superintendent was further instructed to obtain "easement deeds" from the allottees. Exhibit 1. On November 28, 1942, the Superintendent wired permission to Idaho Power Company to construct an electrical transmission line across the Fort Hall Indian Reservation (hereinafter Reservation). Exhibit 2.

9. On January 7, 1943, Idaho Power Company deposited \$1,643.00 with the Superintendent to pay for damages incurred

during the construction of a transmission line across the Reservation. Exhibit 3.

10. In March 1943 Idaho Power Company completed the construction of a 21.513 mile transmission line across the Reservation without obtaining the prior consent or easement deeds from the landowners.

11. On October 30, 1943 the Commissioner of Indian Affairs requested that the Superintendent advise him about the assessment of annual charges for Idaho Power Company's construction of a transmission line which traversed tribal land. Exhibit 4.

12. On November 2, 1943, the Office of Indian Affairs wrote Idaho Power Company to find out whether the amount of compensation paid would be a one-time or yearly rental. Exhibit 5.

13. In 1944 it was the "custom" of the United States Department of the Interior, Office of Indian Affairs, to refer applications for rights-of-way to construct electrical transmission lines over allotted Indian lands to the superintendent of the reservation involved, to request that a damage appraisal be conducted, to obtain the consent of the landowners, and to recommend an annual rental charge which could be assessed. However, as a matter of "practice," damages caused by the right-of-way were appraised on a lump sum basis and the payment of annual rental charges was waived without consulting the landowners. Exhibit 6.

14. On February 1, 1944, Idaho Power Company wrote the Superintendent regarding obtaining the necessary easements from the

transmission line. The letter and the consent stated each landowner would receive a payment to be determined by negotiations between Idaho Power Company and the Bureau of Indian Affairs based upon an appraisal of the power line. Exhibit 14.

25. The Bureau of Indian Affairs did not notify the landowners of their right to negotiate the renewal of the right-of-way or disclose the existence of an appraisal which was prepared by Idaho Power Company and their subsequent approval of it until July 1999.

26. The Fort Hall Realty Office of the Bureau of Indian Affairs provided the names and mailing addresses of each landowner to Idaho Power Company so they could obtain their consent for Idaho Power Company and the Bureau of Indian Affairs to negotiate compensation and the renewal of the right-of-way for fifty (50) years. Exhibits 14-24.

27. The Bureau of Indian Affairs failed to disclose the existence of an appraisal by Idaho Power Company or obtain an appraisal on behalf of the landowners before allowing Idaho Power Company to obtain consents for the renewal of the right-of-way.

28. The Fort Hall Realty Office of the Bureau of Indian Affairs routinely, and as a matter of practice, provides the names and addresses of Indian landowners to non-Indians who are interested in obtaining agriculture leases or rights-of-way on the Fort Hall Indian Reservation.

29. On January 6, 1998, Plaintiff Papse, as chairman of the Fort Hall Landowners Alliance, wrote the Superintendent on behalf of the individual landowners informing him that the

allotment owners and information on the final cost of obtaining the right-of-way. Exhibit 7.

15. On November 20, 1945, the Superintendent assessed the damages suffered by individual landowners due to the construction of Idaho Power Company's transmission line. On December 17, 1946, the Assistant Secretary of the Department of the Interior approved a lump sum damage payment of \$628.50 to the individual landowners for a fifty (50) year right-of-way. Exhibit 8.

16. On February 26, 1946 the Superintendent assessed the damages suffered by an individual landowner due to the crossing of Idaho Power Company's transmission line over Allotment 1550. On December 17, 1946, the Assistant Secretary of the Department of the Interior approved a lump sum damage payment of \$10.00 to the individual landowner for a fifty (50) year right-of-way. Exhibit 9.

17. On May 7, 1945, the Superintendent assessed the damages suffered by the Shoshone-Bannock Tribes due to the construction of Idaho Power Company's transmission line. On December 17, 1946, the Assistant Secretary of the Department of the Interior approved a lump sum damage payment of \$193.00 to the Shoshone-Bannock Tribes for a fifty (50) year right-of-way. Exhibit 10.

18. In 1946, Idaho Power Company made an application for and received a 21.513 mile long, forty (40) foot wide, right-of-way across the Reservation for the previously constructed electrical power transmission line. This 138kV electrical transmission line is presently known as the Brady-Fremont transmission line. Exhibit 11.

19. The United States government never sought annual rental payments and the individual landowners never received any annual payments to compensate them for Idaho Power Company's use of their land.

20. Upon information and belief, the individual landowners, except for allotment 1550, not including the Shoshone-Bannock Tribes, did not consent to the granting of an easement or execute an easement deed. On or about December 17, 1946, the Assistant Secretary of the Interior granted the easement to Idaho Power. Exhibit 12.

21. On or about August 29, 1996, Idaho Power Company filed an application with the Bureau of Indian Affairs to renew its right-of-way for another fifty (50) year period. Exhibit 13.

22. Idaho Power Company hired an appraiser to determine the compensation which would be paid for the renewal of the right-of-way for another fifty (50) years. On April 4, 1997, Idaho Power Company valued the renewal of the right-of-way for fifty (50) years at \$63,585.00 based upon the value of the land if it were used for dryfarm cropland or dry grazing land rather than for an electrical transmission line.

23. On December 21, 1997, Idaho Power Company sent out a letter to each individual landowner with a Consent Of Owners To Grant Right-Of-Way which was prepared by the Fort Hall Agency of the Bureau of Indian Affairs to each landowner. Exhibit 14.

24. Idaho Power Company requested that each landowner sign the Consent and return it to Idaho Power Company in order to renew the fifty (50) year easement for the existing Brady-Fremont

transmission line. The letter and the consent stated each landowner would receive a payment to be determined by negotiations between Idaho Power Company and the Bureau of Indian Affairs based upon an appraisal of the power line. Exhibit 14.

25. The Bureau of Indian Affairs did not notify the landowners of their right to negotiate the renewal of the right-of-way or disclose the existence of an appraisal which was prepared by Idaho Power Company and their subsequent approval of it until July 1999.

26. The Fort Hall Realty Office of the Bureau of Indian Affairs provided the names and mailing addresses of each landowner to Idaho Power Company so they could obtain their consent for Idaho Power Company and the Bureau of Indian Affairs to negotiate compensation and the renewal of the right-of-way for fifty (50) years. Exhibits 14-24.

27. The Bureau of Indian Affairs failed to disclose the existence of an appraisal by Idaho Power Company or obtain an appraisal on behalf of the landowners before allowing Idaho Power Company to obtain consents for the renewal of the right-of-way.

28. The Fort Hall Realty Office of the Bureau of Indian Affairs routinely, and as a matter of practice, provides the names and addresses of Indian landowners to non-Indians who are interested in obtaining agriculture leases or rights-of-way on the Fort Hall Indian Reservation.

29. On January 6, 1998, Plaintiff Papse, as chairman of the Fort Hall Landowners Alliance, wrote the Superintendent on behalf of the individual landowners informing him that the

landowners or their representatives wanted to directly negotiate the renewal of the right-of-way with Idaho Power Company. Exhibit 15. The letter requested information under the FOIA for the right-of-way including the "current and complete ownership list, with addresses and individual ownership interests" which had already been provided to Idaho Power Company.

30. On January 19, 1998, Ernestine Werelus, on behalf of the Fort Hall Landowners Alliance, wrote Idaho Power Company at their request to inform them of the Alliance's representation of individual landowners regarding the renewal of the right-of-way. Exhibits 16 and 17.

31. On February 13, 1998, Plaintiffs' counsel wrote the Superintendent notifying him that the individual landowners had requested the Fort Hall Landowners Alliance to represent them in the negotiations for the renewal of the Idaho Power Company right-of-way. Exhibit 18. In addition the letter renewed the request for the names and mailing addresses of the individual landowners who owned the allotments within the right-of-way.

32. On February 13, 1998, Plaintiffs' counsel also wrote the Superintendent informing him that the Fort Hall Landowners Alliance, at the request and in conjunction with the Shoshone-Bannock Tribes, would directly negotiate with Idaho Power Company. Exhibit 19. The letter specifically objected to the Idaho Power Company appraisal as not representing the fair market value of the right-of-way and to a renewal term of fifty (50) years.

33. On February 23, 1998, Plaintiffs' counsel wrote the Portland Area Director of the Bureau of Indian Affairs notifying

him of the individual landowners' request for the Bureau of Indian Affairs to use the Opportunity Cost Methodology to value the renewal of the right-of-way in the Idaho Power Company negotiations. Exhibit 20.

34. The Plaintiffs' and the Tribe's experts determined, using the Opportunity Cost Methodology, that the renewal of Idaho Power Company's right-of-way for twenty (20) years was worth at least ten times the Idaho Power Company appraisal.

35. On February 25, 1998, the Superintendent responded to the February 13, 1998 letter, by refusing to disclose the information but did not claim any exemption under the FOIA. The Superintendent stated that there was no need to supply the Fort Hall Landowners Alliance with the names and addresses of the individual landowners because all the parties had agreed to use the Opportunity Cost Methodology and the Fort Hall Landowners Alliance could not represent the individual landowners. Exhibit 21.

36. On March 19, 1998, the Fort Hall Landowners Alliance advised the Superintendent of the landowners' names who had given them authority to negotiate with Idaho Power Company. Exhibit 22.

37. On March 30, 1998, Plaintiffs' counsel wrote the Superintendent responding to his February 25, 1998 letter. Exhibit 23. The letter informed the Superintendent the landowners were rejecting the Bureau of Indian Affairs' representation in the negotiations with Idaho Power Company and asserting their right under federal law to conduct their own negotiations.

38. On April 23, 1998, the Portland Area Director of the Bureau of Indian Affairs formally denied the Plaintiffs' FOIA

request under the Privacy Act, 5 U.S.C. § 552a(b)(1)-(12) and the Freedom of Information Act, 5 U.S.C. § 552(b)(6) which permits withholding of information when disclosure "would constitute a clearly unwarranted invasion of personal privacy." Exhibit 24.

39. The Area Director's decision provided that the Bureau of Indian Affairs would notify each landowner of the Plaintiffs' request and would afford them the opportunity to consent to the release of their names and mailing addresses.

40. On or about April 21, 1998, the Area Director sent the landowners a letter and form to be signed authorizing disclosure. Exhibit 25.

41. The Plaintiffs have received from the BIA the names and mailing addresses of fifty-six (56) of the landowners who had given consent to the disclosure. Exhibit 26.

42. On May 13, 1998, the Plaintiffs filed an appeal of the denial of their request. Exhibit 27.

43. On September 30, 1998, the appeal was denied on the basis of exception (6) of the FOIA by adopting the recommendations of the Associate Solicitor of the United States Department of the Interior. Exhibit 28.

44. The Plaintiffs have exhausted all applicable administrative remedies.

45. Without the disclosure by the BIA of the names, mailing addresses, and percentages of ownership, the BIA's past and current practice of waiving or only seeking inadequate compensation during the negotiation of rights-of-way and easements on the Fort Hall Indian Reservation will continue unabated and the Indian

landowners will only be compensated for a small fraction of the value of the land.

46. The Plaintiffs have been injured by the refusal of the Defendant to release the names, mailing addresses, and percentages of ownership interest of the owners and co-owners of the trust land upon which Idaho Power Company was previously given a right-of-way even though Idaho Power Company was given the same information because they are unable to represent themselves in the renewal negotiations and the other landowners who are unaware of the renewal negotiations. In addition, the Fort Hall Landowners Alliance is prevented from educating and advising the other owners and co-owners of their legal rights in this matter.

47. The Defendant's policy of refusing to disclose the names and mailing addresses of co-owners of allotments prevents the Fort Hall Landowners Alliance from assisting and representing their members and other Indian landowners in negotiating fair and adequate compensation for other rights-of-way and easements.

48. The Defendant's policy of disclosing the names and addresses of Indian landowners to entities seeking rights-of-way and easements but not to the landowners has prevented Indian landowners from receiving fair and adequate compensation for the use of their land.

FIRST CLAIM FOR RELIEF

VIOLATION OF THE FREEDOM OF INFORMATION ACT

49. Plaintiffs reallege and incorporate by reference all of the allegations contained in paragraphs 1 through 48 above.

50. The Bureau of Indian Affairs has a duty under the FOIA to provide the Plaintiffs with the names, mailing addresses, and ownership interests of all owners and co-owners of the allotments which are included in a right-of-way under 5 U.S.C. § 552(a)(3).

51. The Bureau of Indian Affairs has wrongfully concluded that the release of the names, mailing addresses, and ownership interests of the owners and co-owners of these allotments would constitute an unwarranted invasion of personal privacy under 5 U.S.C. § 552(b)(6).

52. The Bureau of Indian Affairs has failed and refused to recognize the release of the names, mailing addresses, and ownership interests will assist Plaintiffs and the public in their ability to evaluate the Bureau of Indian Affairs' compliance with its statutory, regulatory, and fiduciary duties.

53. The Bureau of Indian Affairs' denial of the Plaintiffs' request is a violation of the FOIA.

SECOND CLAIM FOR RELIEF

VIOLATION OF FEDERAL STATUTES AND REGULATIONS

54. Plaintiffs reallege and incorporate by reference all of the allegations contained in paragraphs 1 through 53 above.

55. The Secretary of the Interior is empowered to grant rights-of-way for all purposes across lands held in trust by the United States government for individual Indians pursuant to 25 U.S.C. § 323.

56. No rights-of-way across trust lands may be granted without the consent of the individual owners as prescribed in 25 U.S.C. § 324.

57. The Secretary does not have the consent of the individual owners of the land as required by 25 U.S.C. § 324 to negotiate or grant a renewal of Idaho Power Company's right-of-way.

58. The Plaintiffs are entitled to receive just compensation for the renewal of Idaho Power Company's right-of-way pursuant to 25 U.S.C. § 325.

59. The Secretary has prescribed regulations for the purpose of administering 25 U.S.C. §§ 323-25. These regulations, 25 C.F.R. § 169, *et seq.*, provide that the Defendant assist the Plaintiffs with the renewal of the right-of-way and allow them to negotiate its terms, including fair and adequate compensation.

60. The Defendant's denial of access to the names, mailing addresses, and ownership interests to the Plaintiffs and their representatives is impeding the Plaintiffs' ability to negotiate on their own behalf for the renewal of the right-of-way previously given to Idaho Power Company.

61. The Defendant's denial of access to the names, mailing addresses, and ownership interests to the Plaintiffs and their representatives is preventing the Plaintiffs from protecting their interests and rights in their allotments.

62. The Plaintiffs are entitled to the names, mailing addresses, and ownership interests of their co-owners and other owners who own the allotments which are within the right-of-way granted to Idaho Power Company in order to conduct the negotiations

on their own behalf for the renewal of the right-of-way, to protect their interest and rights in their allotments, and to seek fair and adequate compensation.

THIRD CLAIM FOR RELIEF

BREACH OF TRUST RESPONSIBILITY

63. Plaintiffs reallege and incorporate by reference all of the allegations contained in paragraphs 1 through 62 above.

64. Pursuant to 25 U.S.C. § 348, the United States holds allotment lands in trust for the sole benefit of the Indian to whom the allotment was made, or for that Indian's heirs.

65. 25 U.S.C. §§ 323-325 and 25 CFR Part 169 create a trust relationship between the United States and Indian allottees. *United States v. Mitchell*, 463 U.S. 206 (1983).

66. Defendant is responsible for performing the fiduciary duties required of the trustee of Plaintiffs' land. The Superintendent for the Fort Hall Agency is a local agent of the Bureau of Indian Affairs and is held to the same fiduciary standards that the United States is when it acts as a trustee to Indian people.

67. The Defendant has breached its fiduciary duty by not releasing the names, mailing addresses, and ownership interests of the owners and co-owners of the land upon which Idaho Power Company was previously given a right-of-way.

68. Defendant has breached its fiduciary duties, thereby depriving Plaintiffs of the use and benefits of the trust land by not providing to them the information necessary for them to

represent themselves in the negotiations for the renewal of the right-of-way previously given to Idaho Power Company.

FOURTH CLAIM FOR RELIEF

IRREPARABLE HARM

69. Plaintiffs reallege and incorporate by reference all of the allegations contained in paragraphs 1 through 68 above.

70. Plaintiffs have suffered, and will continue to suffer, irreparable injury by Defendant's violation of statutes and regulations governing Indian lands and breach of fiduciary duties.

FIFTH CLAIM FOR RELIEF

PRIVACY ACT

71. Plaintiffs reallege and incorporate by reference all of the allegations contained in paragraphs 1 through 70 above.

72. The Defendants disclosed personal information contained in their agency records, including the names, addresses, and ownership information of the individual Plaintiffs without their authority or prior written consent to the Idaho Power Company.

73. The Defendants knowingly, intentionally, and wilfully disclosed the Plaintiffs' records and the disclosure has had an adverse effect upon the individual Plaintiffs.

74. This disclosure violated 5 U.S.C. § 552a(b).

75. The individual Plaintiffs have suffered damages of \$1,000.00 pursuant to 5 U.S.C. § 552a(g)(4)(A).

SIXTH CLAIM FOR RELIEF

COMMON LAW BREACH OF TRUST

76. Plaintiffs reallege and incorporate by reference all of the allegations contained in paragraphs 1 through 75 above.

77. The Defendants' disclosure of personal information to Idaho Power Company, the failure to timely disclose and provide appraisal information prior to allowing Idaho Power Company to obtain consents for the renewal of the right-of-way, approving Idaho Power Company's appraisal without the Plaintiffs' knowledge or consent, and failure to conduct an appraisal for the Plaintiffs breached the Defendants' fiduciary duties to the individual Plaintiffs pursuant to common law trust principles.

SEVENTH CLAIM FOR RELIEF

BREACH OF TRUST

78. Plaintiffs reallege and incorporate by reference all of the allegations contained in paragraphs 1 through 77 above.

79. The Defendants failed to obtain and advise the individual Plaintiffs of appraisal information necessary to assist them in negotiations for the renewal of the right-of-way in violation of 25 CFR Part 169.13.

RELIEF SOUGHT

WHEREFORE, the Plaintiffs request that this Court:

1. Declare that the Defendants' refusal to disclose the names, mailing addresses, and ownership interests which were requested violates 5 U.S.C. § 552(a)(3).

2. Declare that the Defendants' refusal to disclose the names, mailing addresses, and ownership interests which were

requested violates 25 U.S.C. §§ 323-325 and 25 C.F.R. §§ 169, et seq.

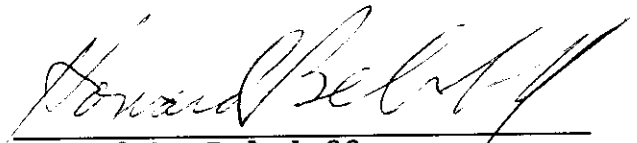
3. Declare that the Defendants have breached their fiduciary obligations arising from the trust relationship between the United States and Indian allottees under common law trust principles, 25 U.S.C. §§ 323-325 and 25 C.F.R. §§ 169, et. seq.

4. Declare that the Defendants have violated the Privacy Act, 5 U.S.C. § 552a, and award them damages of not less than \$1,000.00.

5. Issue a mandatory injunction directing Defendants to perform their fiduciary duties pursuant to 25 U.S.C. §§ 323-325, 25 C.F.R. §§ 169, et. seq., and common law trust principles.

6. Grant such further orders or other relief as the Court deems just and proper.


DATED this 12th day of April, 2000.


Howard A. Belodoff
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2000, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing AMENDED COMPLAINT to:

Nicholas Woychick
United States Attorney's Office
P.O. Box 32
Boise, ID 83707


Howard Belodoff

1 1 Division
Claims

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378.5a
004

Fort Hall Agency,
Fort Hall, Idaho,
November 28, 1942.

Commissioner of Indian Affairs,
Chicago, Illinois.

Dear Sir:

On October 26 we wired the Office requesting authority for the Idaho Power Company to begin construction of a transmission line across Indian lands to furnish power to the Pocatello Naval Gun Plant. By wire of November 6, Assistant Secretary of the Interior Chapman gave us the following reply:

"Ratel 26 temporary permit granted to Idaho Power Company begin construction work at own risk across tribal and allotted lands with consent of tribe and individual Indian owners respectively subject to advance deposit double estimated damages and compliance applicable laws and regulations. Easement deeds must be obtained from allottees under recent decision now before Supreme Court on certiorari."

Other instruct on regarding the "easement deeds" mentioned in Mr. Chapman's wire is desired. We have obtained from the Idaho Power Company a form of "power line easement" which we understand they use in obtaining right-of-way over privately-owned lands. A copy of this form is enclosed for examination by the Office, and we will appreciate knowing whether this form of easement is acceptable. If not, kindly let us know what wording should be used.

Also, kindly inform us whether easement deeds should be obtained in the case of Idaho Power Company's application for right-of-way to furnish power to the Pocatello Army Air Base (Office file reference Land Division, Claims, 41925-42). Schedules of damages and appraisals have been made and consent of owners on Form 5-104b has been obtained. These will be submitted within the next few days.

Very truly yours,

C. L. Graves,
Superintendent.

in
enc.

PLAINTIFF'S
EXHIBIT

1



IDAHO POWER COMPANY

BOISE, IDAHO

Dec. 4, 1942

Mr. C. L. Graves, Supt.
Fort Hall Indian Reservation
Fort Hall, Idaho

Re: American Falls-Pocatello
132 KV Line

Dear Sir:

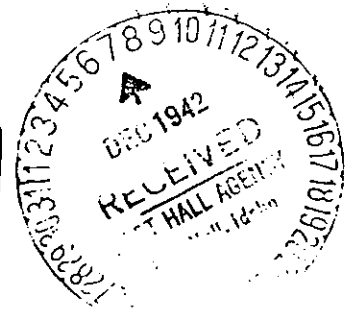
This will acknowledge receipt of your wire of November 23, granting authority to proceed with the construction of electric power line over Indian lands in the Fort Hall Indian Reservation, subject to advance deposit of double estimated damages.

As soon as we are advised of the amount of deposit required, a check will be forwarded to you. In the meantime, we wish to thank you for the prompt attention given this matter.

Yours very truly,

G. H. Petersen
G. H. Petersen, Supt.
Land & Tax Department.

GHP:DW



379.5



IDAHO POWER COMPANY

BOISE, IDAHO

Jan. 7, 1943

Mr. C. L. Graves, Superintendent
Fort Hall Indian Reservation
Fort Hall, Idaho

Re: American Falls-Pocatello
132 KV Transmission Line
E. P. No. 987

Dear Mr. Graves:

In accordance with the understanding which the writer had with you in your office on January 23, we are transmitting herewith our check No. 34 in the amount of \$1,643.00, which represents twice the estimated damage in connection with the construction of the American Falls-Pocatello 132 KV line over the Fort Hall Indian Reservation allotted lands, and I trust this meets with your approval.

Very shortly we expect to have our formal application to the Federal Power Commission for a license in shape to go forward, at which time you will be furnished with a duplicate copy of said application.

Yours very truly,

G. H. Peterson
G. H. Peterson, Supt.
Land & Tax Department.

GHP:DW
Encl.



MEMORANDUM for the General Land Office.

CHICAGO 54

OCT 30 1943

Receipt is acknowledged of your letter of October 19 (1946599 "pn") transmitting a map filed by the Idaho Power Company in connection with the granting of a license by the Federal Power Commission for Power Project No. 1902 which affects Indian lands on the Fort Hall Reservation.

A report from the Superintendent of the Fort Hall Agency is being requested. We will communicate further with you promptly upon receipt of the superintendent's report.

(Sd.) W. B. Weekley
FOR THE

Commissioner.

WBB:rl 10/25/43

cc: Fort Hall Agency with map and copy of General Land Office letter of March 4, 1943, for report, recommendation, consent of Indians, etc. Please advise whether an annual rental charge of \$5.00 per mile or fraction thereof should be assessed where the line traverses tribal land. Please return the map with your report.



November 1943

Mr. Diehl:

Attached hereto is the file folder on the Right of Way for Idaho Power Company. Also, attached, is a copy of memorandum for the General Land Office from the Commissioner's office.

I believe the thing to be done is for me to again write Mr. Peterson of Idaho Power to find out whether or not the amount to be paid is for full compensation, or a yearly rental or just what. Then get the names of the people involved and start getting either Powers of Attorneys or Easement Deeds (would like to know which you recommend).

Also, we have nothing to go by except the typed and penciled schedule contained in our folder and the letter written us by Idaho Power. They say that "At a conference with Mr. Graves, former superintendent, on January 4 of this year, the matter of schedules of damages and appraisals covering right of way over allotted land was discussed..." and they arrived at the figures contained in these schedules. I do not know anything about an appraisal, unless it is supposed to have been considered in the schedule.

If you do not have time to go over this, or make any recommendation, please let me have this material back and I shall proceed as stated above.

(1) *[Signature]* Belnap

(2) *[Signature]*

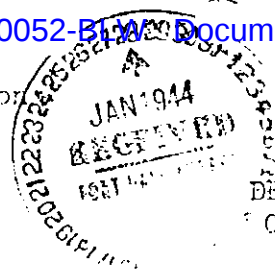
(3) *[Signature]*

(4) *[Signature]*

Copy to Diehl



Land Division
Claims



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
CHICAGO 54, ILLINOIS

ist Hall,

CIRCULAR LETTER

JAN 13 1944

SUBJECT: Rights of way for Transmission Lines.

To all Superintendents.

Applications for rights of way for electric transmission lines over allotted Indian lands are filed under the Act of February 15, 1901 (31 Stat. 790, 43 U. S. C. sec. 959) or that of March 4, 1911 (36 Stat. 1253, 43 U. S. C. sec. 961). These acts are administered by the General Land Office and applications thereunder are required to be filed with the local land office. See 25 C. F. R. 256.42. In states where there is no local land office, the applications may be filed with the superintendent having charge of the Indian lands affected.

The regulations promulgated under the acts mentioned (43 C. F. R. 245; also General Land Office Circular No. 1461a), provide that for the use of the lands, including Indian lands, there shall be assessed an annual rental charge of \$5.00 per mile or fraction thereof, except that as to Indian lands the imposition of the annual rental charge shall be optional and not mandatory.

It has been the custom in the past, when an application is filed under one of the acts mentioned above for an electric transmission line right of way over allotted Indian land, to refer the case to the superintendent concerned with the request that he cause the damages to the land to be appraised, obtain the consent of the Indian owner, and recommend to this Office whether an annual rental charge for the use of the land should be assessed. It has been our observation that as a matter of practice damages for such rights of way are usually appraised on a lump sum basis and a waiver of the payment of annual rental charges is usually recommended.

After a careful consideration of this matter, it has been concluded that damages for all transmission line rights of way over allotted Indian lands should be assessed only on a lump sum basis and this Office, without requiring each superintendent to submit a justification, will recommend a waiver of the annual rental charge of \$5.00 per mile. In appraising damages for transmission line rights of way, therefore, all superintendents should take care to see that the damages are adequate to compensate the Indians fully for the use of their lands and that the Indians will not suffer the loss of any compensation equitably due them by the appraisal of damages on a lump sum rather than an annual rental basis.

Please do not hesitate to call upon this Office for any further information.

(Sgd) WALTER V. WOHLKE,
Assistant to the Commissioner.

5683





IDAHO POWER COMPANY
BOISE, IDAHO

February 1, 1944



Superintendent
Fort Hall Indian Reservation
Fort Hall, Idaho

Re: American Falls-Pocatello 132 kv trans-
mission line.
E R #987

Dear Sir:

On January 7, 1943, Idaho Power Company deposited with the Superintendent of the Fort Hall Indian Agency the sum of \$1,643.00 in connection with its application for a right-of-way over lands within your Agency. The lands crossed by the transmission line are located in Sections 1, 2, 3, 4, 8 and 9; Township 7 S; Range 32E; Sections 2, 3, 4, 5, 6; Township 7; Range 33 E and Sections 35 and 36; Township 6 S; Range 33E.

The above mentioned deposit of \$1,643.00, representing ^{ed} two times the estimated damages due to the location of the transmission line on Indian lands. It is my understanding that most of the lands involved are allotted lands though we do not have the names of the Indian owners. It is also our understanding that the necessary right-of-way would be obtained by the Agency so that it could be incorporated in our application for license now before the Federal Power Commission for consideration. Since that time, it has been ruled that easements over allotted land would have to be secured.

I am informed that since the above negotiations took place, the superintendency of the Agency has changed hands several times and that the records do not disclose what understanding was had with the former superintendent, Mr C L Graves, in regard to terms for securing the right-of-way, however, on November 4, 1943, I gave a brief outline to Mr L M Henry, at that time acting superintendent. Nothing has been heard from your office since that time.

We are rather anxious to close this matter out and secure a license from the Federal Power Commission for this line and consequently would appreciate very much your advising us just what the status of this matter is now. We would also like to know, if you are in a position to tell us at this time, what the cost of the right-of-way amounted to.

Yours very truly,

G. H. Petersen
G H Petersen
Special Agent



ALLIOTED LAND SCHEDULE

(Showing damages assessed against Idaho Power Company in connection with application, under the Act of March 4, 1906 Stat. 1253; for grant of right-of-way for transmission line involving Fort Hall Indian Lands)

Allottee	Allot No.	Description	Uncultivated Land	Cultivated Land
Rate per Attachment				
Ella Bell	1575	Lot 7 Sec. 8 T 7 S, R 32 EBM	2-Pole \$7.00	2-Pole \$10.00
Frank Ramsey	1484	NW/4SW/4 Sec. 9 T 7 S, R 32 EBM	3-Pole \$15.00	3-Pole \$15.00
Joe Bell Ramsey	1485	SW/4NW/4; SE/4NW/4 Sec. 9 T 7 S, R 32 EBM	1	
Lura Tissidimit	1197	SW/4NE/4; NW/4NE/4; NE/4NE/4 Sec. 9 T 7 S, R 32 EBM	5	
Levi Levering, Jr.	73A	SE/4SE/4 Sec. 4 T 7 S, R 32 EBM	4	
Lincoln Levering	71A	S/2SW/4 Sec. 3 T 7 S, R 32 EBM	1	
Lincoln Levering	71A	NE/4SW/4 Sec. 3 T 7 S, R 32 EBM	4	
Vena Levering	69A	SE/4NE/4 Sec. 3 T 7 S, R 32 EBM	1	
Wilhelmina White Crow	1473	SW/4NW/4 Lots 1, 2, 3 & 4 Sec. 2 T 7 S, R 32 EBM	3	
Sadie Crow Ramsey	1483	Lots 3 & 4 Sec. 1 T 7 S, R 32 EBM	1	
Jack Ramsey	1482	Lots 1 & 2 Sec. 1 T 7 S, R 32 EBM	5	
Julius Ballard	1569	Lots 3 & 4 Sec. 6 T 7 S, R 33 EBM	5	
James Moshio	1584	Lots 1 & 2 Sec. 6 T 7 S, R 33 EBM	2	
Earl Wildcat	1499	Lots 3, 5 & 6 Sec. 5 T 7 S, R 33 EBM	5	
Langwatsy Wildcat	1500	Lot 4 Sec. 4 T 7 S, R 33 EBM	6	
Levi Wildcat	1546	Lot 1 Sec. 5 T 7 S, R 33 EBM	4	
Chumcey Tindore	1473	Lots 2 & 3 Sec. 4 T 7 S, R 33 EBM	5	
N. Iam Tindore	1476	S/2SW/4 Sec. 36 T 6 S, R 33 EBM	1	
		SW/4SE/4; E/2SE/4 Sec. 36 T 6 S, R 33 EBM	3	
			6	

\$448.00 \$10.50 \$130.00 \$40.00 \$62.00

Department of the Interior
Washington, D. C.
APPROVED
DEC 17 1946
CERTIFICATE
Fort Hall Agency
Fort Hall, Idaho
Nov. 20, 1945

Assistant Secretary of the Interior
(Sgd) C. Girard Davidson
I hereby certify that the foregoing appraisal was made by me or under my direction; that the damages scheduled are fair and adequate to compensate the Indian Owners of the land; that the project was fully explained to the Indians in interest; that the total amount of damages—namely, \$628.50—has been deposited with me by the applicant and is now being carried as a special deposit; and that I respectfully recommend that the schedule be approved.



Superintendent and Special Disbursing Agent.

SUPPLEMENTAL ALLOTTED LAND SCHEDULE

(Showing damages assessed against Idaho Power Company, Boise, Idaho, in connection with application, under the Act of March 4, 1911; 36 Stat. 1253; for grant of right-of-way for power transmission line involving Fort Hall Indian land).

Allottee	Allot. No.	Description of allotment	Installation	Appraised damages
May Sumner Tindore, deceased	1550	SE/4 Sec. 35, T 6 S R 33 E, Boise Meridian, Idaho. (Under cultivation - dry farm).	Overhead line - no poles.	None



CERTIFICATE

Fort Hall Indian Agency,
Fort Hall, Idaho,
February 26, 1946

I hereby certify that the foregoing appraisal was made by me or under my direction; that there is no damage to the land but the Indian owners won't give the easement for less than \$10; and that I recommend approval of this schedule.

Department of the Interior
Washington, D. C.
APPROVED
18
DEC 17 1946

Carl W. Beck
CARL W. BECK,
Superintendent

stant (Sgd) C. Girard Davidson
Acting Secretary of the Interior

TRIBAL LAND SCHEDULE

Following damages assessed against Idaho Power Company in connection with application, under the act of March 4, 1911; Stat. 1253; for grant of right-of-way for transmission line involving Fort Hall Indian lands)

Allottee	Allot No.	Description Rate per Attachment	Uncultivated Land		Cultivated Land		Total
			2-Pole	3-Pole	2-Pole	3-Pole	
Shoshone Bannock Tribes Tribal	Lot 1 Sec. 4 T 7 S, R 33 EBM						
	Lots 1,2,3 & 4 Sec. 3 T 7 S, R 33 EBM		2				2
	Lots 1,2,3 & 4 Sec. 2 T 7 S, R 33 EBM		9				9
			3		7	1	2
			\$98.00		\$70.00		\$15.00
					\$10.00		\$193.00

CERTIFICATE

Fort Hall Agency
Fort Hall, Idaho
May 7, 1945

I hereby certify that the foregoing appraisal was made by me or under my direction; that the damages scheduled are fair and adequate to compensate the Indians of the Fort Hall Reservation; that the total amount of damages--viz, \$193.00--has been deposited with me by the applicant and is now being carried as a "Special Deposit"; and I respectfully recommend that the schedule be approved.

Carl W. Beck
Superintendent and Special Disbursing Agent

Department of the Interior
Washington, D. C.
APPROVED DEC 17 1945

(Sgd) C. Girard Davidson
Secretary of the Interior



IDAHO POWER COMPANY

APPLICATION

TO

DEPARTMENT OF THE INTERIOR

FOR

GRANT FOR RIGHT OF WAY

(Under Act of March 4, 1911; 36 Stat. 1253)

FOR

A 138 KV TRANSMISSION LINE

Designated

THE AMERICAN FALLS - POCATELLO 138 KV TRANSMISSION LINE

Across

Sections 31, 32, 33, 28, 27, 26, 25, 24 and 13	T 7 S, E 31 E, B M
Sections 18, 17, 8, 9, 4, 3, 2 and 1	T 7 S, R 32 E, B M
Sections 6, 5, 4, 3, 2	T 7 S, R 33 E, B M
Sections 35, 36	T 6 S, R 33 E, B M
Sections 31, 32, 33 and 34	T 6 S, R 34 E, B M

in

Power and Bannock Counties, Idaho



Am. Falls - Pocatello
3/1/43

136KV

APPLICATION FOR POWER PERMIT

The Idaho Power Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, with office and principal place of business at Boise, Ada County, in the State of Idaho, hereby makes application for a power permit for the occupancy and use of certain lands of the United States in the State of Idaho by constructing, maintaining and operating thereon for the main purpose of the transmission and use of electric power the following works:

A 136 KV, 3 phase, single circuit, electric transmission line of suspension type 2 pole H frame construction with tower poles spaced 13 feet 6 inches on center. The equipment used in the TRANSMISSION LINE is as follows:

60 foot, class 2 A S A, treated western cedar poles.
Two 3" x 10" x 28' Douglas Fir crossarms.
Suspension Locks No. 18140 insulators.
3/0 Anaconda Hollow cable conductors.

The said TRANSMISSION LINE is 22.532 miles in length extending easterly from the applicant's American Falls Hydro-electric plant in Section 31, T 7 S, R 51 E, B M, in Power County, Idaho to a newly constructed substation in Section 34, T 6 S, R 54 E, B M, in Bannock County, Idaho. It will cross over lands of the United States under the jurisdiction of the Department of the Interior as follows: Fort Hall Indian Reservation 10.4 miles and Bureau of Grazing 1.019 miles. The remaining 11.113 miles are over privately owned property. The TRANSMISSION LINE is designated THE AMERICAN FALLS - POCATELLO 136 KV TRANSMISSION LINE, all as shown on a certain map numbered ZE 5057, which, together with certain papers, are filed herewith and made a part hereof.

The construction of the line was completed about March 1, 1943, under authority of and advance permit from the Federal Power Commission. On January 13, 1943, a formal application dated December 29, 1942, for a license for the construction, operation and maintenance of this TRANSMISSION LINE on public lands of the United States in Power and Bannock Counties, Idaho, was filed with the Federal Power Commission by the applicant herein. The project was designated as Project No. 1902 by said Commission. In its order dated September 12,

1944, the Commission dismissed the application stating that the line is not a primary line as set forth in Section 3(11) of the Federal Power Act and therefor not within its licensing authority.

The TRANSMISSION LINE was constructed to furnish supplemental transmission line capacity for the Pocatello, Idaho, area, made necessary by the construction and operation of a United States Navy Ordnance Plant and a United States Army Air Base near Pocatello, Idaho.

There is no other electric transmission or distribution line of any other person, corporation, association, municipality or other agency engaged in the sale of power, and to the best of our knowledge, none such contemplated, within 10 miles of any part of the TRANSMISSION LINE of which the line for which a permit is requested forms a part.

THE SECRETARY OF THE INTERIOR
WASHINGTON 25, D. C.

EASEMENT FOR RIGHT OF WAY TO THE IDAHO POWER COMPANY.

By virtue of the authority vested in the Secretary of the Interior pursuant to the provisions of the act of March 4, 1911 (36 Stat. 1253, 43 U. S. C., sec. 961) and subject to the regulations approved December 14, 1942, 43 C. F. R., Part 245, Cumulative Supplement (1944) and to all pertinent future regulations issued under the act and to all valid, existing rights, an easement is hereby granted to the Idaho Power Company, a Maine corporation, for a right of way for a period not to exceed fifty years from date hereof over restricted Indian lands within the Fort Hall Reservation in Idaho for the construction and maintenance of an electric transmission line as shown on the map filed in the Indian Office bearing file No. 26308-45, dated July 3, 1945, and the affidavit of the company's engineer executed February 1, 1945, subject to the submission to the Commissioner of Indian Affairs of a resolution passed by the Fort Hall Business Council consenting to the granting of the right of way across the tribal land, and further subject to

the terms and conditions of the stipulation filed by the company dated February 1, 1945.

The right of way is limited to twenty feet on each side of the center line as shown on the map but shall not include any land outside of the tracts described in the schedules of damages approved this date.

IN WITNESS WHEREOF, I have subscribed my name hereto on this day Dec. 17, 1946.

(Signed) C. Girard Davidson

Assistant Secretary of the Interior.

C O P Y



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

RIGHT-OF-WAY APPLICATION
Fort Hall Agency

COMES NOW THE APPLICANT Idaho Power Company of Boise, Idaho, this 29th day of August, 1997, who whereby petition(s) the Bureau of Indian Affairs and respectfully files under the terms and provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328), and Departmental Regulations 25 CFR 169, an application of a power line right-of-way for the following purposes and reasons:

Renew authorization for an existing 138 kV transmission line right-of-way for a 50 year term. The line was known as the American Falls-Pocatello Transmission line; #409. It is now known as Brady-Fremont.

Across the following-described restricted land (easement description):

- See attached page. -

Said right-of-way to be 9.9 miles in length, 40 feet in width, and 48 acres in size (or area), as shown on attached map of definite location, attached hereto, and made a part hereof.

THE SAID APPLICANT UNDERSTANDS AND EXPRESSLY AGREES TO THE FOLLOWING STIPULATIONS:

1. To construct and maintain the right-of-way in a workmanlike manner.
2. To pay all damages and compensation, in addition to the deposit made pursuant to 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction and maintenance of the right-of-way.
3. To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, or subcontractors and their employees.
4. To restore the lands as nearly as may be possible to their original condition upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted.
5. To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during construction and maintenance of the project.
6. To take soil and resources conservation protection measures, including weed control, on the land covered by the right-of-way.



7. To do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
8. To build and repair such roads, fences and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossing for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.
9. That upon revocation or termination of the right-of-way, the applicant shall, so far as reasonably possible, restore the land to its original condition. The determination of "reasonably possible" is subject to Secretary's approval.
10. To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.
11. That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purposes not inconsistent with the primary purpose for which the right-of-way is granted.

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the Code of Federal Regulations, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

DATED: 8/29/97

APPLICANT

Roy C. Hillman
Roy C. Hillman, Manager
Real Property Management

ATTEST: N/A

Required Supporting Documents:

1. () Written consent of landowners.
2. () Map (plats) of definite location (3 copies, see 25 CFR 169.6, 169.7, 169.8, 169.9, 169.10, and 169.11).
3. () Deposit of estimated damages or compensation (see 169.4 and 169.14).
4. () For corporation or business, requirements of 25 CFR 169.4 and 169.5 (unless previously filed):
 - () a. State certified copy of corporate charter or articles of incorporation.
 - () b. Certified copy of corporate resolution, by-laws, articles of partnership or association authorizing signatory to file the application.
 - () c. If an out-of-state business, state certification that the applicant is authorized to business in the State of Idaho.
 - () d. Evidence of good faith and financial responsibility (annual report, financial statement, bond, etc.)
5. Evidence of Authority of officers to execute papers (Form 5-1541).

IDAHO POWER COMPANY
Brady-Fremont 138 kV Transmission Line #409
Legal Description To Accompany Right-of-Way Application

T7S, R32E

- Sec. 8 NE $\frac{1}{4}$ SE $\frac{1}{4}$ (Lot 7)
- 9 NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$
- 4 SE $\frac{1}{4}$ SE $\frac{1}{4}$
- 3 S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$
- 2 SW $\frac{1}{4}$ NW $\frac{1}{4}$, Lots 1, 2, 3, 4
- 1 Lots 1, 2, 3, 4

T7S, R33E

- Sec. 6 Lots 1, 2, 3, 4
- 5 Lots 1, 3, 5, 6
- 4 Lots 1, 2, 3, 4
- 3 Lots 1, 2, 3, 4
- 2 Lots 1, 2, 3, 4

T6S, R33E

- Sec. 35 SE $\frac{1}{4}$ SE $\frac{1}{4}$
- Sec. 36 S $\frac{1}{2}$ SW $\frac{1}{4}$

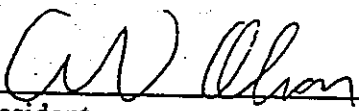
IDAHO POWER COMPANY REAL AND PERSONAL PROPERTY
SIGNATURE AUTHORIZATION FORM

Pursuant to the Resolutions of the Idaho Power Company Board of Directors adopted July 13, 1995, and attached hereto as exhibit A, the undersigned Vice President of the Company hereby authorizes ROY C. HILLMAN, an employee of the Company, to execute all documents relating to the acquisition or conveyance of real or personal property or any interest therein by or on behalf of the Company, except for:

- (1) Relinquishments of transmission line easements;
- (2) Real property purchase and sale agreements and conveyance deeds; and
- (3) Any other agreement for the acquisition or conveyance of real or personal property involving revenues or expenses to the Company exceeding \$50,000 in any year.

This authorization supersedes and replaces the authorization granted to Roy C. Hillman dated November 14, 1995, and shall remain in full force and effect until terminated by the Company in writing.

Dated this 1 day of MARCH, 1996.



Vice President

CERTIFICATE OF AFFIDAVIT

for renewal of
Brady-Fremont 138 kV Transmission Line,
a portion of Transmission Line #409
(Formerly known as American Falls-Pocatello)

I, Tris J. Yerrington, being first duly sworn upon oath, depose and say:

1. That I am a Professional Engineer;
2. that I am an employee of Idaho Power Company, an Idaho corporation, doing business at 1221 West Idaho Street, Boise, Idaho, 83705;
3. that the above-titled transmission line crosses the Fort Hall Indian Reservation in the same route as shown on the construction drawing which was submitted with the application for right-of-way, dated February 1, 1945;
4. that the transmission line conductor has been changed from 3/0 Anaconda Hollow Cable to 715.5 MCM "STILT" aluminum cable, steel reinforced;
5. that the line operates and will continue to operate as a 138 kV transmission line;
6. and that the transmission line formerly referred to as American Falls-Pocatello 138 kV Transmission Line is now referred to as Brady-Don-Fremont 138 kV Transmission Line.

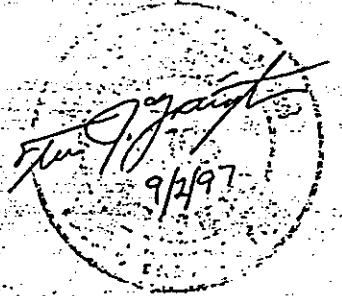
Dated this 2nd day of September, 1997.

Tris J. Yerrington
(signature)

STATE OF IDAHO)

) ss:

County of Ada)



On this 2 day of September, 1997, before me, the undersigned, a Notary Public in and for said State, personally appeared Tris J. Yerrington, known to me to be the person who executed the foregoing instrument and acknowledged to me that he/she executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Michael D. [Signature]
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 8-5-2000



PO BOX 70
BOISE IDAHO 83707

*Diana L. Pon
Permit Specialist
Land Management Services
(208) 388-2695 Tel. (208) 288-6926 Fax*

December 21, 1997

Mr. Blandon L. Coby
Star Route
Pocatello, ID 83201

CERTIFIED MAIL # P 054 438 694

Re: Renew easement for existing power line

Dear Mr. Blandon L. Coby:

Idaho Power Company owns a power transmission line that crosses the Fort Hall Reservation near Pocatello, Idaho. The line number is 409, and is known as the Brady-Fremont 138kV transmission line. A map is enclosed to show where this line is. The Bureau of Indian Affairs granted Idaho Power Company a 50-year easement for the line, and Idaho Power would like to renew it.

Because you have an interest in some of the land the line crosses, your signature is needed in order to renew the easement. You will receive payment for the easement renewal. The amount of the payment will be determined by negotiations between Idaho Power Company and the Bureau of Indian Affairs. The negotiations will be based on an appraisal of the power line route.

Please sign and date the enclosed consent form and have someone sign as a witness. Then return the form to me in the envelope provided. If you have questions, please call me at (208) 388-2695, or you may call G. Gail Williams at the BIA Realty Office at (208) 238-2307.

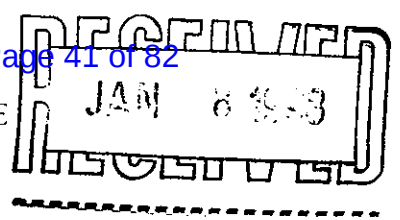
Very truly yours,

A handwritten signature in cursive script, appearing to read "D. L. Pon".

Enclosures



FORT HALL LANDOWNERS ALLIANCE
Frank R. Papse, Sr., Chairman
POST OFFICE BOX 847
FORT HALL, IDAHO 83203-0847



January 6, 1998

ERIC LAPOINTE, SUPERINTENDENT
BUREAU OF INDIAN AFFAIRS
FORT HALL AGENCY
FORT HALL, IDAHO 83203-0220
ATTN: Realty

Re: Right of Way Idaho Power Co. 138 KV

Dear Mr. LaPointe:

We have just recently been approached by numerous landowners who have received a letter from the IDAHO POWER COMPANY Re: Renew easement for existing power line.

The letter from the power company included a consent form requesting a witnessed signature from the individual landowners and included that the amount of the payment will be determined by negotiations between Idaho Power Company and the B.I.A.

I wish to inform you that this is NOT ACCEPTABLE. The individual landowners have every right to be involved in negotiations or to have their authorized representative be involved. It is very premature for Idaho Power Co. to be soliciting the individual landowners without any genuine and fair offer or providing more complete information.

I am requesting a copy of all information that is on file with the local Fort Hall Agency, Portland Area Realty section, and if necessary, the B.I.A. headquarters Realty section regarding this power line easement, especially a copy of the original easement agreement with copies of the consents from the landowners.

I am also requesting a current and complete ownership list, with addresses and individual ownership interests be provided to the alliance. This has already been provided to Idaho Power Co. as evidenced by the consent to lease forms they have already mailed, by certified mail, to the landowners. Since this list already exists it should be no hardship to provide it to us. Please DO NOT quote us the "privacy act" as this does come under the "freedom of information act".

If you require assistance in making copies of material requested we will be more than happy to provide the necessary help.

I thank you for your cooperation in meeting the needs of our members and in the protection of their rights.

Sincerely,

cc: Director, PAO
ILAS

Frank R. Papse Sr.
Frank R. Papse, Sr.





IDAHO POWER COMPANY
P.O. BOX 70
BOISE, IDAHO 83707

Phone (208) 388-2695
Fax (208) 388-6926

January 13, 1998

Ernestine Broncho Werelus
Board Member/Coordinator
Fort Hall Landowners Alliance
Post Office Box 847
Fort Hall, Idaho 83203-0847

Re: Renew Easement for existing power line

Dear Ms. Werelus:

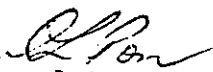
Per your letter dated January 2, 1998, enclosed is a copy of the original easement for Idaho Power Company's Brady-Fremont 138 kV transmission line. This line was formerly known as the American Falls-Pocatello line. Additional pertinent information is included. I forward these to you because I understand they are of public record, and copies can also be obtained from the BIA.

You will notice that I have enclosed two drawings. The drawing with the 01/09/97 date stamp is a copy of the original map that accompanied the application for easement in 1945. There is an additional drawing, date stamped 6/6/97, which is a larger copy of the one sent with the consent forms to the landowners. It was also included in my renewal application which was addressed to the Bureau of Indian Affairs. This newer map is an updated version of the original map and shows the current land ownership (BIA versus private) and includes allotment numbers. Copies of these drawings can also be obtained from the BIA.

In return, I would appreciate it if you could send me any information that might help me better understand the participation of the Fort Hall Landowners Alliance in the easement renewal process. I have been in regular contact with the BIA regarding the renewal process and have forwarded all relevant correspondence to officials of the Fort Hall Reservation. If the Alliance is also to be involved in renewing the easement for this transmission line, it would help me greatly to understand its role.

Please provide this information to me at your earliest convenience.

Very Truly Yours,

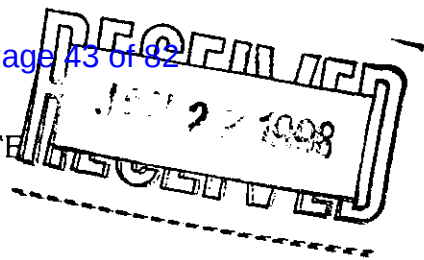

Diana L. Pon
Permit Specialist
Land Management Services

Enclosures

c: G. Gail Williams, BIA



FORT HALL LANDOWNERS ALLIANCE
POST OFFICE BOX 847
FORT HALL, IDAHO 83203-0847
(208) 238-3960



January 19, 1998

DIANA L. PON
PERMIT SPECIALIST
LAND MANAGEMENT SERVICES
IDAHO POWER COMPANY
POST OFFICE BOX 70
BOISE, IDAHO 83707

Re: Easement renewal for existing power line

Dear Ms. Pon:

Thank you for your response, letter dated January 13, 1998, with the enclosures regarding the easement for the Brady-Fremont 138 kV transmission line.

In return you asked for information that might help you to better understand the participation of the Fort Hall Landowners Alliance in the renewal process. The FHLA is a chartered, non-profit organization comprised of individual landowners who have ownership interests in the various allotments (tracts) on the Fort Hall Reservation. Some are original allottees but most are heirs. The Alliance assists all landowners in the management of these lands, especially in the leasing process. As landowners we are all becoming more knowledgeable and exercising our ownership rights. This includes all aspects and does include being involved ourselves, or through our chosen representative, in all negotiations. There are very many among our group of landowners that have provided me with a power of attorney to represent them. There are some who have asked me to represent them in this easement renewal and therefore I will be actively involved on their behalf.

Many of the landowners feel that they have been very poorly represented by the Bureau of Indian Affairs and therefore choose NOT to have the BIA speak for them. The Tribal government is represented through the Business Council and/or Land Use Commission. The federal regulations and statutes permit the individuals or their spokesperson be involved. I have already been involved in meetings with Tribal officials and the BIA Superintendent, Mr. Eric LaPointe.

I would appreciate being on your mailing list to obtain all pertinent information and correspondence relating to this easement renewal. To this date I feel the individual landowners have been poorly informed and have essentially only been given a so called "blank check" to sign. We have already noted that the ownership interests indicated on the "consents" sent to the individual owners are NOT CORRECT. Our membership has brought their letters and consent forms to me and ask that I represent them. Some have contacted me by telephone to advise that they

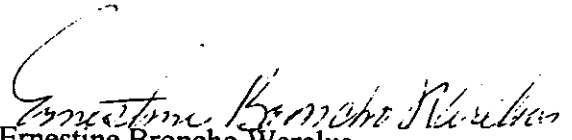


inadvertently signed and returned the consents. These we will be retracting.

I would especially appreciate any and all copies of appraisals already on record and any new appraisal with methodology for arriving at proposed payments to the landowners.

The FHIA is located at the Shoshone-Bannock Tribal Business Center with address and telephone number as provided on the top of page 1. If you have any further questions please feel free to call me. If you have trouble reaching me at the office I can also be reached at (208) 785 6608.

Sincerely,


Ernestine Broncho Werelus
Board Member/Coordinator

cc: Delbert Farmer, Rev. Dir.
Albert Jones, Tribal Atty.
Superintendent
ILAS



IDAHO LEGAL AID SERVICES
Administrative Office

310 North 5th Street
P.O. Box 913
Boise, ID 83701-091
208 / 336 / 8980
Fax 208 / 342 / 2561

Ernesto G. Sanchez
Executive Director

Howard A. Belodoff
Associate Director

Kelly A. Miller
Deputy Director

Mary Zimmerman
Administrator

Bev Allen
Executive Assistant

February 13, 1998

ERIC LAPOINTE, SUPERINTENDENT
BUREAU OF INDIAN AFFAIRS
FORT HALL AGENCY
PO BOX 220
FORT HALL ID 83203

Re: Freedom of Information Act (FOIA) Request
Idaho Power Company Renewal

Dear Mr. LaPointe:

I will be representing individual landowners' interests at the request of the Fort Hall Landowners Alliance, Inc. (FHLA) in the negotiations for the renewal of Idaho Power Company's right of way for its transmission line in accordance with 25 CFR § 169.3(b) and 169.19. Mrs. Werelus has indicated that the BIA has refused her request under the Privacy Act for the names and mailing addresses of the individual landowners whose property is within the right of way. It appears the BIA has provided Idaho Power Company with the names and addresses because they have directly contacted the landowners seeking consent for their renewal. I do not understand how the BIA can assert the names and addresses cannot be disclosed to the FHLA but can be disclosed to Idaho Power Company. Perhaps you can provide me with an explanation of why the Privacy Act applies to the FHLA but not to Idaho Power.

I am enclosing a recent decision the state of Idaho received from the United States District Court after the Department of Agriculture refused to provide similar information to it. The Court held that the Privacy Act was not applicable in that situation. In my opinion the Indian landowners have a far stronger argument for disclosure than the state had for disclosure in their case because of their legal right to negotiate for the renewal of the right of way, the fiduciary duty the BIA owes to them, and the BIA's voluntary disclosure to the Idaho Power Company. Therefore, I request under the FOIA, 5 U.S.C. § 552, that the BIA disclose the names and addresses of the individual landowners who own property subject to the right of way. In addition, I would request that you provide me with the BIA's official policy which you contend

Area Offices

P.O. Box 1683
Boise, ID 83701
208 / 345 / 0106

P.O. Box 1116
Caldwell, ID 83606
208 / 454 / 2591

P.O. Box 1439
Coeur d'Alene, ID 83814
208 / 667 / 9559

482 Constitution Way
Idaho Falls, ID 83402
208 / 524 / 3660

P.O. Box 973
Lewiston, ID 83501
208 / 743 / 1556

P.O. Box 1785
Pocatello, ID 83204
208 / 233 / 0079


PLAINTIFF'S
EXHIBIT
17/18

Eric LaPointe
February 13, 1998
Page 2

prohibits disclosure of the names and mailing addresses of the individual allottees to other allottees who share a lessee. If the BIA is not willing to voluntarily disclose the names and mailing addresses, I would have no alternative but to file a complaint in court seeking an Order on this issue.

Please respond within ten (10) days of your receipt of this request. Thank you.

Sincerely,


Howard A. Belodoff
Attorney at Law

HAB:B
Enc.

cc: Fort Hall Landowners Alliance



IDAHO LEGAL AID SERVICES
Administrative Office

February 13, 1998

ERIC LAPOINTE, SUPERINTENDENT
BUREAU OF INDIAN AFFAIRS
FORT HALL AGENCY
PO BOX 220
FORT HALL ID 83203

Re: Idaho Power Renewal of Right of Way

Dear Mr. LaPointe:

I am writing on behalf of the allottees being represented by the Fort Hall Landowners Alliance (FHLA) in the above matter. At the Tribe's invitation, the FHLA has been participating in the negotiations with Idaho Power on the renewal of their right of way. As you may know, I attended a meeting with Idaho Power on February 9, 1998. Geri Williams was present with representatives of the Tribe.

I wish to inform you that the FHLA, in conjunction with the Tribe, is undertaking direct negotiations with Idaho Power on behalf of individual landowners pursuant to 25 CFR 169, *et. seq.* It is our position that the appraisal conducted by representatives of Idaho Power does not represent fair market value for the renewal of the right of way herein. The Idaho Power appraisal is under-valued because it is based upon the agricultural value of the land. The landowners and the Tribe are in agreement that the proper appraisal method which should be used should be based upon the opportunity cost doctrine. This method has been used for other right of way cases on the reservation. In addition, the FHLA joins the Tribe in opposing a renewal for a term of 50 years. The term should be negotiated by the parties, but 50 years is too long in our opinion.

I am hoping that the BIA will fully cooperate with the individual landowners in this matter. Please let me know the BIA's position on the FHLA's participation in this matter.

Thank you.

Sincerely,


Howard A. Belodoff
Attorney at Law

HAB:B

cc: Fort Hall Landowners Alliance
Albert Jones, Tribal Attorney
Delbert Farmer, Revenue Director

Area Offices

P.O. Box 1683
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IDAHO LEGAL AID SERVICES
Administrative Office

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Boise, ID 83701-09
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Fax 208 / 342 / 2561

Ernesto G. Sanchez
Executive Director

Howard A. Belodoff
Associate Director

Kelly A. Miller
Deputy Director

Mary Zimmerman
Administrator

Bev Allen
Executive Assistant

February 23, 1998

STAN SPEAKS
BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
911 NE 11TH AVE
PORTLAND OR 97232-4169

Re: Idaho Power Right of Way Negotiations

Dear Mr. Speaks:

I am writing on behalf of the individual landowners who are being represented by the Fort Hall Landowners Alliance, Inc. in the negotiations with the Shoshone-Bannock Tribe regarding compensation for a right of way and trespass pursuant to 25 CFR 169, et seq., in the above entitled matter. I wanted to inform you that the individual landowners join the Shoshone-Bannock Tribes in support of the application of the Opportunity Cost Methodology in the Idaho Power negotiations as stated in Chairman Arnold Appeney's letter to you dated February 12, 1998.

I am also enclosing a copy of a letter dated February 13, 1998 which I previously sent Superintendent LaPointe regarding this matter. Thank you.

Sincerely,

Howard A. Belodoff
Attorney at Law

HAB:B

Enc.

cc: Albert Appeney, Chairman
Fort Hall Landowners Alliance, Inc.
Albert Jones, Tribal Attorney
BIA Superintendent LaPointe
Delbert Farmer, Revenue Director

Area Offices

P.O. Box 1683
Boise, ID 83701,
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Pocatello, ID 83204
208 / 233 / 0079





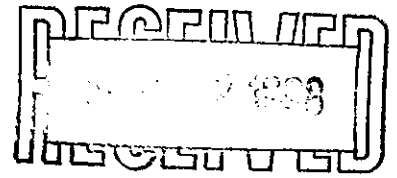
United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
P.O. BOX 220
FORT HALL AGENCY
FORT HALL, IDAHO 83203-0220

February 25, 1998



Mr. Howard A. Belodoff
Idaho Legal Aid Services
310 North 5th Street
P.O. Box 913
Boise, ID 83701-0913



Dear Mr. Belodoff:

We are responding to your letters both dated February 13, 1998 regarding renewal of the Idaho Power Company Right-of-Way.

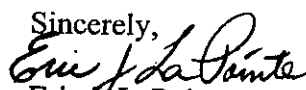
You have indicated in your letters that you are representing members of the Fort Hall Landowners Alliance in the negotiations for the right-of-way. We are wondering whether or not you realize that the powers of attorney that were signed by your landowner membership was for the purpose of negotiations for leasing and not for this particular right-of-way.

In a recent meeting with the Shoshone-Bannock Tribal Business Council it was decided that the Bureau of Indian Affairs acting for and in behalf of all the landowners involved in this right-of-way renewal would be entitled to receive the amount that the Tribe is negotiating for on this renewal. In this meeting we did recognize the appraisal done by the independent appraiser that was hired by the Idaho Power Co. and have all agreed to keep this appraisal on file. Because the Tribe was in favor of using the opportunity cost doctrine for the negotiation, payment would be determined by this method.

Therefore, there will be no need to supply you with the names and addresses of the individuals involved in this right-of-way negotiation because everyone has agreed to use the same method of payment of the right-of-way.

In answer to our supplying you with addresses of the various landowners involved in the right-of-way renewal it was found that there were approximately six(6) persons who are members of the Fort Hall Landowners Alliance and most likely you would have their addresses on file. But since you don't have their power of attorney for this negotiation for right-of-way your request would have no bearing.

We hope we have answered your questions, if not please feel free to write us again.

Sincerely,

Eric J. LaPointe
Superintendent

cc: Albert Jones, Tribal Attorney
Delbert Farmer, Revenue Director
Fort Hall Landowners Alliance



FORT HALL LANDOWNERS ALLIANCE
POST OFFICE BOX 847
FORT HALL, IDAHO 83203-0847
(208) 238 3960

RECEIVED
MAR 23 1998
March 19, 1998

ERIC LAPOINTE, SUPERINTENDENT
BUREAU OF INDIAN AFFAIRS
FORT HALL AGENCY
FORT HALL, IDAHO 83202-0220

Re: Power of Attorney - Utility R-O-W

Dear Mr. LaPointe:

This is to advise you that the following individuals have provided me with the authority to represent them in negotiations regarding IDAHO POWER COMPANY application for a right of way/ easement for line number 409 known as the Brady-Fremont 138kV transmission line:

BALLARD, KENDALL W.
BALLARD, WILLARD
BALLARD, WILFORD SR.
COBY, BLANDON
COBY, REBA (NEAMAN)
COVINGTON, WILVERNA A.
GEORGE, THEODORE
GEORGE, ADELINE (BURNS)
HOOTCHEW, BOYD
HOOTCHEW, RONNIE L.
JACKSON, BLAINE
JACKSON, LAVON SR.
JACKSON, LAVON JR.
JACKSON, LILLIAN R.
JACKSON, MARGIE
MCKEAN, ELAINE R.
MENTA, ALENE A.
MEEKS, HOWARD A. (PER GUARDIAN ARLENE ORTIZ)
MOSHO, ELI W.
MOSHO, VERONDA J.
ORTIZ, ARLENE
PIPER, JOHNETTE
PIPER, MITCHELL
PONZO, CLOTHILDA
RAMON, CIDEAHZAH
RAMON, DAPHNE

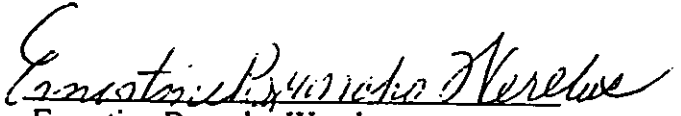


TORRES, JESUS JR.
WARREN, MARY S.
WETCHIE, BELLE BALLARD

Please be on notice that the authority provided by the aforementioned individuals revokes and supersedes any and all other power of attorney or consents previously provided.

There are additional alliance members who hold interests in allotments affected by the Idaho Power request for right of way who have provided me with verbal approval to represent them. As soon as they complete the necessary power of attorney I will update this information and provide you with the necessary documentation. A copy of the current authorizations is attached and provided to the Superintendents office for the Fort Hall Agency files.

Sincerely,


Ernestine Broncho Werelus
Landowners Representative

cc: (without attachments)

A. Appenay, Chairman FHBC
Delbert Farmer, Rev. Dir.
Albert Jones, Tribal Atty.
H. Belodoff, Atty., ILAS
Idaho Power Co. - Attn: D.L. Pon



IDAHO LEGAL AID SERVICES

Administrative Office

310 North 5th Street
P.O. Box 913
Boise, ID 83701-09
208 / 336 / 8980
Fax 208 / 342 / 256

Ernesto G. Sanchez
Executive Director

Howard A. Belodoff
Associate Director

Kelly A. Miller
Deputy Director

Mary Zimmerman
Administrator

Bev Allen
Executive Assistant

March 30, 1998

ERIC LAPOINTE, SUPERINTENDENT
BUREAU OF INDIAN AFFAIRS
FORT HALL AGENCY
PO BOX 220
FORT HALL ID 83203-0220

Dear Mr. LaPointe:

I am responding to your letter of February 25, 1998 regarding the renewal of the Idaho Power right of way and my request of February 13, 1998 under the Freedom of Information Act, 5 U.S.C. § 552 (hereinafter FOIA), to receive the names and addresses of the individual landowners. In your letter you questioned whether the powers of attorney given the Fort Hall Landowners Alliance (hereinafter FHLA) to negotiate leases authorizes the FHLA to negotiate on their behalf with Idaho Power for a right of way. It is my understanding that the FHLA, on March 19, 1998, sent you a letter with the powers of attorney for 29 landowners who specifically authorized the FHLA to negotiate a right of way with Idaho Power Company on their behalf. I trust this has answered your concerns.

You further indicated in your letter that the BIA, on behalf of the landowners, decided at a meeting with the Shoshone-Bannock Tribal Business Council that the landowners would receive the same amount that the Tribe negotiated for the right of way under the Opportunity Cost Doctrine. While the landowners who are represented by the FHLA do intend to support the Tribe's position on compensation, they have requested that I represent their interests in the negotiations with Idaho Power, not the BIA. The landowners are legally entitled to negotiate on their own without the BIA. See 25 CFR §§ 169.3(b) and 169.12.

You seem to have misunderstood my FOIA request and the BIA's legal obligation for disclosure. Whether or not I or the FHLA represent the landowners, I am legally entitled to disclosure of the information under the FOIA. I would request you provide me with the requested information or state what exemption you are claiming under the FOIA which prevents you from making a disclosure. I would further request that you provide me with the written

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Boise, ID 83701
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Idaho Falls, ID 83402
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P.O. Box 973
Lewiston, ID 83501
208 / 743 / 1556

P.O. Box 1785
Pocatello, ID 83204
208 / 233 / 0079



Eric LaPointe
March 30, 1998
Page 2

policies under the FOIA which the BIA or the Department of the Interior have adopted regarding non-disclosure of such information.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Howard A. Belodoff", with a stylized flourish at the end.

Howard A. Belodoff
Attorney at Law

HAB:B

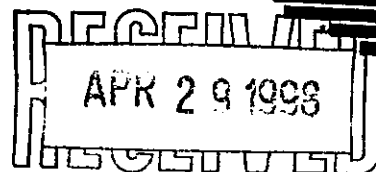
cc: Fort Hall Landowners Alliance
Delbert Farmer
Albert Jones
Diana L. Pon, Idaho Power Company
Stan Speaks



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Portland Area Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169



APR 23 1998

Howard A. Belodoff, Esq.
Idaho Legal Aid Services
310 North 5th Street
Post Office Box 913
Boise, Idaho 83701-0913

Dear Mr. Belodoff:

This is in response to your Freedom of Information Act (FOIA) request of February 13, 1998, which you reiterated in your letter of March 30, 1998. Specifically, you have requested on behalf of the Fort Hall Landowners Association the names and addresses of individual landowners within a right of way held by Idaho Power company. In your letter of February 13, 1998, you asserted that this information has previously been provided to Idaho Power Company.

Based on our review, the Bureau of Indian Affairs, in 1996, did release a list to Idaho Power Company. While we are sympathetic to your argument that this prior disclosure requires release of the information to the landowners association, your position is not in accordance with the requirements of the Privacy Act. This list was generated from "Indian Land Leases-Interior/BIA-5", which is a system of records covered by the Privacy Act. Under the Privacy Act, a record subject to the act may not be released without prior written consent of the individual to which it pertains unless one of 12 exceptions is met. See 5. U.S.C. §§ 55a(b)(1)-(12).

One of the 12 exceptions mandates release of records where such release is required under the FOIA. 5 U.S.C. § 552a(b)(3). We have determined that the names and addresses of the individual landowners are exempt from disclosure under Exemption (6), which permits withholding of information about individuals in "personnel, medical and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy". To determine whether an unwarranted invasion of privacy would occur, an agency is required to balance the privacy interests of the individual against the public interest in disclosure.

As courts have determined, individuals have a substantial privacy interest in the non-disclosure of their identities and home addresses. Concerning the public interest to be weighed, courts have held that the only relevant public interest to be considered is the extent to which disclosure of the requested information would shed light on the agency's performance of its statutory duties. We find that release of this information would not meet this standard. Accordingly, because we find individuals have a substantial privacy information interest in the requested information and because we find no public interest in release of the information, we conclude the information is protected by exemption (6). Because exemption (6) applies, the agency is prohibited under the Privacy Act from making a discretionary disclosure. See DOD v FLRA, 510 U.S. 487, 502 (1994).



-2-

To summarize, your assertion that Bureau of Indian Affairs' earlier release of the information to Idaho Power requires the release to the landowners association is not a permissible exception to the Privacy Act's non-disclosure rule. However, to avoid the perception that this agency has not treated the landowner's association fairly, the agency is willing to contact each individual landowner appearing on the list disclosed to Idaho Power to inquire whether it may release the landowner's name and address to the association. We will then release those names and addresses for which we have received written approval to your group. We expect to complete this process within 30 days.

In making this response I have consulted with Marian L. Peterson, FOIA Coordinator for the Portland Area of the Bureau of Indian Affairs and Stephanie Lynch, FOIA Solicitor, Office of the Regional Solicitor, Northwest Region.

You may appeal this denial, in accordance with 43 CFR 2.18, by writing to The Freedom of Information Act Appeals Officer, Department of the Interior, 1849 C Street N.W., MS-5312, Washington, D. C. 20240. A copy of your initial request and this letter should accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter and must be received no later than 20 workdays after the date of this letter. Your letter should also contain a brief statement of the reasons why you believe this response to be in error.

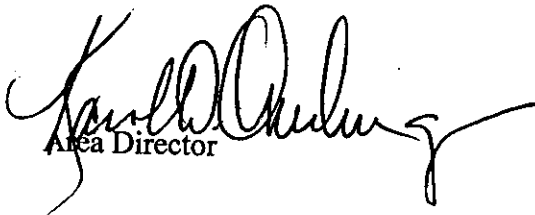
The fee incurred in responding to your request was minimal and has, therefore, been waived.

If you have any questions, please contact Marian L. Peterson, Freedom of Information Act Coordinator, at the above address or call (503) 231-2229.

Sincerely,

ACTING

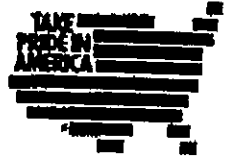
Area Director

A handwritten signature in black ink, appearing to read "Paul A. Chulung", is written over the typed name "Area Director".



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Portland Area Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4168



APR 21 1998

Mr. Eli W. Mosho
Star Route, Box 180
Pocatello, ID 83201

Dear Sir or Madam:

Pursuant to the Freedom of Information Act (5 U.S.C. 552) Howard A. Belodoff, Assistant Director, Idaho Legal Aid Services on behalf of the Fort Hall Landowners Alliance has requested the names and addresses of the individual landowners involved in the renewal of the Idaho Power right of way.

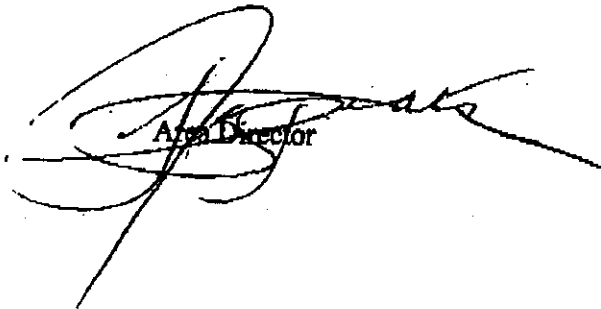
As an interest holder in Allotment No. 1584 - James Mosho, Original Allottee, Lots 1 & 2 Sec. 6, T. 7S., R. 33EBM your name is one of those subject to release. We have advised Mr. Belodoff that, under Privacy Act restrictions, we cannot release your name and address without your written consent and that we would contact you to determine whether you wish to have this information released to him.

Mr. Belodoff has stated that he has been requested by the Fort Hall Land Owners Alliance to represent their interests in the Idaho Power right-a-way negotiations, since they are legally entitled to negotiate individually rather than through the Bureau of Indian Affairs.

If you wish Mr. Belodoff to have access to your name and address, which would allow him to contact you directly regarding negotiations, please sign, date and return the enclosed statement in the stamped and addressed enveloped provided.

If we have not heard from you within 30 days we will assume that you do not want your name and address released. If you have any questions please contact Marian L. Peterson, FOIA Coordinator at the above address or call (503) 231-2229.

Sincerely,


Area Director

Enclosures



P. 6

2082383702

FAX NO.

2082383702 => IDAHO LEGAL AID BOIS.

SHO-BAN NEWS

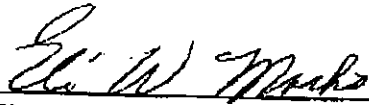
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MAY-15-98 SAT 2:51 PM

**United States
Department of the Interior
Bureau of Indian Affairs**

PRIVACY ACT DISCLOSURE AUTHORIZATION

As an interest holder in Allotment No. 1584 - James Mosho, Original Allottee, Lots 1 & 2 Sec. 6,
T. 7S., R. 33EBM:

**I HEREBY CONSENT TO THE DISCLOSURE OF MY NAME AND ADDRESS TO MR
HOWARD A. BELODOFF, IDAHO LEGAL AID SERVICES ON BEHALF OF THE FORT
HALL LANDOWNERS ALLIANCE.**



Signature of individual on record

5-15-98

Date

Mr. Eli W. Mosho
Star Route, Box 180
Pocatello, ID 83201

P. 7

2082383702

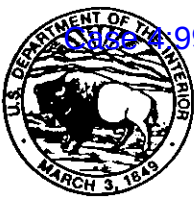
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2082383702 -> IDAHO LEGAL AID BOIS: #7

SHO-BAN NEWS

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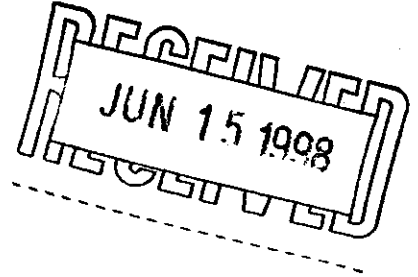
IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS
Portland Area Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169



JUN - 9 1998

Howard A. Belodoff, Esq.
Idaho Legal Aid Services
310 North 5th Street
Post Office Box 913
Boise, Idaho 83701-0913

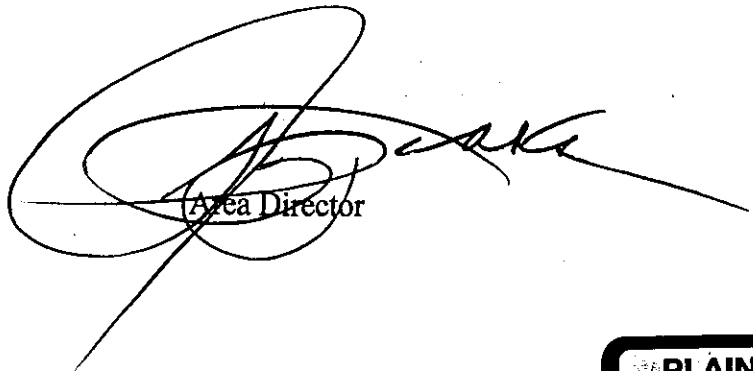


Dear Mr. Belodoff:

As indicated in our April 23, 1998, response to your Freedom of Information Act (FOIA) request, we have contacted each individual landowner appearing on the list disclosed to Idaho Power to inquire whether it may release the landowner's name and address to you. As of June 5, 1998, we have received 41 Privacy Act Disclosure Authorizations. The names and address of those individuals who authorized disclosure have been assembled on the enclosed list. If additional Disclosure Authorizations are received they will be transmitted to you immediately.

If you have any questions please contact Marian L. Peterson, Area FOIA Coordinator, at the above address or call (503) 231-2229.

Sincerely,



Area Director



1. Ms. Clarissa Diana Brown
P.O. Box 716
Fort Washakie, WY 82514
2. Mrs. Angela D. Buckskin
P.O. Box 179
Fort Hall, ID 83203
3. Eldean George Burns
P.O. Box 322
Blackfoot, ID 83221
4. Ms. Jean Ann Cline
General Delivery
Macy, NE 68039
5. Mr. Blandon Coby
P.O. Box 354
Fort Hall, ID 83202
6. Ms. Reba R. Coby
c/o Barbara Neaman
Pocatello, ID 83202
7. Brandon Joyce Jackson
c/o Lillian Jackson
Star Route, Box 218
Pocatello, ID 83204
8. Mrs. Wilverna Covington
P.O. Box 4144
Pocatello, ID 83205
9. Mr. Levester Eagle
25387 Unit 9-39A
Boise, ID 83707
10. Mrs. Bobette W. Haskett
HCR 34, Box 227
Pocatello, ID 83204
11. Mr. Jerry Humpy
Route #2 North, Box 25
Pocatello, ID 83202
12. Amanda Grace Jackson
c/o Wanda Appenay
P.O. Box 292
Fort Hall, ID 83203
13. Mr. Blaine Jackson
Star Route, Box 218
Pocatello, ID 83204
14. Mr. LaVon Jackson, Sr.
Star Route, Box 218
Pocatello, ID 83201
15. LaToya Ann Jackson
c/o Lillian Jackson
Star Route, Box 218
Pocatello, ID 83204
16. Ms. Margie Jackson
Star Route, Box 218
Pocatello, ID 83204
17. Mrs. Lillian R. Jackson
Star Route, Box 218
Pocatello, ID 83201
18. Mary V. Levering
Apt. 2, 1480 Wirt St.
Omaha, NE 68110
19. Ms. Reva M. Levering
c/o Rita Phillips
P.O. Box 202
Macy NE 68107
20. Ms. Ann Losteiner
2827 T. Avenue
Omaha, NE 68107
21. Ms. Charlotte McKee
P.O. Box 205
Heyburn, ID 83336
22. Ms. Eugenia N. Martin
P.O. Box 307
Kake, AK 99830
23. Mr. Eli W. Mosho
Star Route, Box 180
Pocatello, ID 83201
24. Mrs. Loretta W. Mosho
P.O. Box 18
Fort Hall, ID 83203

25. Mrs. Ida S. Murillo
1056 E. Lander
Pocatello, ID 83201
26. Mrs. Karen W. Nielson
P.O. Box 41
Fort Hall, ID 83203
27. Ms. Ameliatte L. Pandoah
P.O. Box 2394
Pocatello, ID 83201
28. Mr. Dewson Pandoah
Airway Heights Corr. Ctr
P.O. Box #1899, SHU-A-9
Airway Heights, Washington
99001-1899
29. Ms. Rosaline Pandoah
P.O. Box 166
Fort Hall, ID 83203
30. Mr. Frank R. Papse
P.O. Box 354
Fort Hall, ID 83203
31. Mr. Richmond Pohipe
P.O. Box 114
Fort Hall, ID 83203
32. Ellen Barttels Seelatse
P.O. Box 1509
Zillah, WA 98953
33. Mrs. Audrey D. Sieweyumptewa
402-6th Avenue, #158
Salt Lake City, UT 84103
34. Ms. Peggy P. Surrell
P.O. Box 184
Fort Washakie, WY 82514
35. Mr. Allen Tindore
P.O. Box 5443
Chubbuck, ID 83202
36. Mr. Merle Tendoy
Rural Route, Box 978
Box Elder, MT 59521
37. Ms. Rosie Tindore
P.O. Box 11
Duckwater, NV 89314
38. Mr. Alvino Tissidimit
P.O. Box 561
Fort Hall, ID 83203
39. Mrs. Mary S. Warren
P.O. Box 776
Blackfoot, ID 83221
40. Mr. Calvert Yupe
P.O. Box 74
Elko, NV 89803
41. Mr. Levi Levering
Community 1st Bank
P.O. Box 790
Valentine, NC 69201
42. Mrs. Inez I. Tindore
Star Route, Box 256
Pocatello, ID 83201



IN REPLY REFER TO:

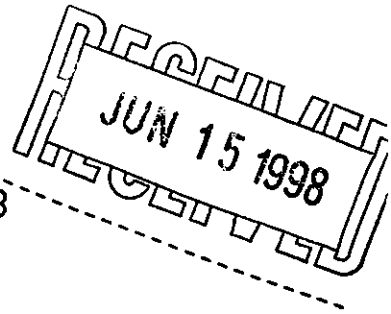
99-cv-00052-BLW Document 139 Filed 04/12/00 Page 61 of 82
United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Portland Area Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169



Howard A. Belodoff, Esq.
Idaho Legal Aid Services
310 North 5th Street
Post Office Box 913
Boise, Idaho 83701-0913

JUN - 8 1998



Dear Mr. Belodoff:

Four additional Disclosure Authorizations have been received in the Portland Area Office of the Bureau of Indian Affairs as of this date. They are as follows:

1. Ms. Marchia T. Allen
P.O. Box 58
Fort Washakie, WY 92514
2. Mr. Franklin B. Hootchew
Route #3, Box 172
Blackfoot, ID 83221
3. Ms. Maxine Levering
5620 North 29th Street
Omaha, NE 68110
4. Mr. Julius L. Wildcat
Post Office Box 302
Wellpinit, WA 99040

If you have any questions please contact Marian L. Peterson, Area FOIA Coordinator, at the above address or call (503) 231-2229.

Sincerely,

Area Director



IN REPLY REFER TO:

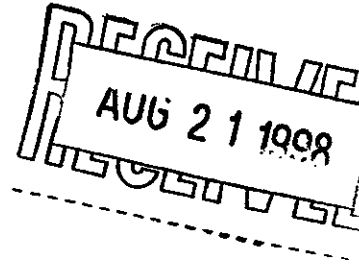
United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Portland Area Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169



Howard A. Belodoff, Esq.
Idaho Legal Aid Services
310 North 5th Street
Post Office Box 913
Boise, Idaho 83701-0913

AUG 17 1998



Dear Mr. Belodoff:

Three additional Disclosure Authorizations have been received in the Portland Area Office of the Bureau of Indian Affairs as of this date. They are as follows:

1. Levi Levering
Community 1st Bank
Post Office Box 790
Valentine, NC 69201
2. Clarice L. Ballard
Post Office Box 176
Fort Washakie, WY 82514
3. Zanette Charles
c/o Vince Hake
1020 Fuston Ave., #3
Pacific Grove, CA 93950

If you have any questions please contact Marian L. Peterson, Area FOIA Coordinator, at the above address or call (503) 231-2229.

Sincerely,

ACTING

Area Director



IN REPLY REFER TO:

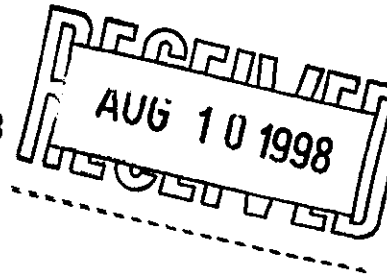
99-cv-00052-BLW Document 139 Filed 04/12/00 Page 63 of 82
United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Portland Area Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169



Howard A. Belodoff, Esq.
Idaho Legal Aid Services
310 North 5th Street
Post Office Box 913
Boise, Idaho 83701-0913

JUL 23 1998



Dear Mr. Belodoff:

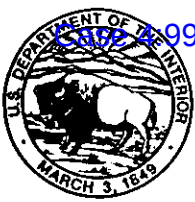
Three additional Disclosure Authorizations have been received in the Portland Area Office of the Bureau of Indian Affairs as of this date. They are as follows:

1. Mr. Ivan L. Tindore
Star Route, Box 256
Pocatello, ID 83201
2. Mr. Randolph Levering
c/co Cornhusker Bank
177th & Cornhusker Highway
Lincoln, NC 68521
3. Mr Albert S. Tindore
Star Route, Box 258
Pocatello, ID 83201

If you have any questions please contact Marian L. Peterson, Area FOIA Coordinator, at the above address or call (503) 231-2229.

Sincerely,

ACTING Area Director



IN REPLY REFER TO:

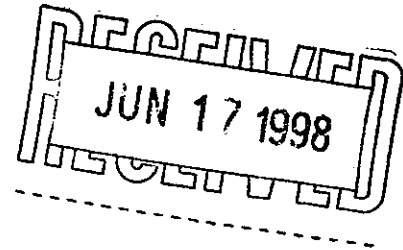
99-cv-00052-BLW Document 139 Filed 04/12/00 Page 64 of 82
United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Portland Area Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169



JUN 12 1998

Howard A. Belodoff, Esq.
Idaho Legal Aid Services
310 North 5th Street
Post Office Box 913
Boise, Idaho 83701-0913



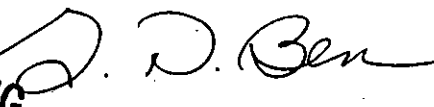
Dear Mr. Belodoff:

Four additional Disclosure Authorizations have been received in the Portland Area Office of the Bureau of Indian Affairs as of this date. They are as follows:

1. Ms. Sandy Snipe Jacksho
P.O. Box 633
Fort Hall ID 83203
2. Ms. Clothilda Ponso
Route #2, Box 54E
Pocatello, ID 83201
3. Ms. Evelyn H. Tindore
Route #1 North Box 85E
Pocatello, ID 83201
4. Ms. Lisa Marie Tindore
Route #1, Box 85E
Pocatello, ID 83202

If you have any questions please contact Marian L. Peterson, Area FOIA Coordinator, at the above address or call (503) 231-2229.

Sincerely,

ACTING 

Area Director



IDAHO LEGAL AID SERVICES
Administrative Office

Via Federal Express - 2nd Day

May 13, 1998

FREEDOM OF INFORMATION ACT APPEALS OFFICER
OFFICE OF THE ASSISTANT SECRETARY
POLICY BUDGET AND ADMINISTRATION
US DEPARTMENT OF THE INTERIOR
WASHINGTON DC 20240

Re: FREEDOM OF INFORMATION APPEAL

Dear Appeals Officer:

The Indian Landowners who own allotments on the Fort Hall Indian Reservation which are held in trust by the United States of America hereby appeal the denial of their request pursuant to the Freedom of Information Act, 5 U.S.C. § 552. On January 6, 1998, the Fort Hall Landowners Alliance, Inc. requested that Erik LaPointe, Superintendent of the Fort Hall Agency, provide them, on behalf of Indian Landowners, with the names and mailing addresses of all the Landowners involved in the renewal of a right-of-way on the Fort Hall Indian Reservation. Attachment 1. On February 13, 1998, the Fort Hall Landowners Alliance, Inc., by their attorney, made a request to the Fort Hall Agency's Superintendent for the names and mailing addresses of Indian Landowners who co-own an undivided interest in their allotments in order to inform them of the negotiations which are being conducted with Idaho Power Company for the renewal of a right-of-way for a power transmission line in

Area Offices

P.O. Box 1683
Boise, ID 83701
208 / 345 / 0106

P.O. Box 1116
Caldwell, ID 83606
208 / 454 / 2591

P.O. Box 1439
Coeur d'Alene, ID 83814
208 / 667 / 9559

482 Constitution Way
Idaho Falls, ID 83402
208 / 524 / 3660

P.O. Box 973
Lewiston, ID 83501
208 / 743 / 1556

P.O. Box 1785
Pocatello, ID 83204
208 / 233 / 0079



310 North 5th Street
P.O. Box 913
Boise, ID 83701-0913
208 / 336 / 8980
Fax 208 / 342 / 2561

Ernesto G. Sanchez
Executive Director

Howard A. Belodoff
Associate Director

Kelly A. Miller
Deputy Director

Mary Zimmerman
Administrator

Bev Allen
Executive Assistant

Freedom of Information Appeal
May 13, 1998
Page 2

accordance with 25 U.S.C. §§ 323 and 324 and 25 C.F.R. §§ 169, et. seq.¹ See Attachment 2. After receiving a reply from the Superintendent dated February 25, 1998, which did not adequately address the request, on March 30, 1998, the Landowners requested an additional response. See Attachments 3 and 4. On April 23, 1998, the Landowners' request was denied. Attachment 5.

The governing federal statutes and regulations provide that no right-of-way shall be granted over individually owned land without prior written consent of the landowners and approval of the Secretary. 25 C.F.R. § 169.3. The regulations clearly provide for the active participation of the Landowners who co-own the allotments in the negotiations and the approval of the compensation which is paid for granting a right-of-way. See 25 C.F.R. § 169.12. The Secretary is obligated "to assist them (the landowner or landowners) in negotiations for a right-of-way renewal." 25 C.F.R. § 162.12.

While the individual landowners have a right to negotiate and consent to the granting of a right-of-way, in certain circumstances the Secretary may grant a right-of-way without their consent. These include when the individual owner is a minor; the owners of the majority of the interests in the allotment consent; the

¹ Indian Landowners who reside on the Fort Hall Indian Reservation do not receive home delivery but only have post office boxes at the Fort Hall United States Post Office. The fact that the home addresses of the Landowners who reside on the Fort Hall Indian Reservation are not requested lessens the privacy interests which apply to this request.

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Page 3

whereabouts of an owner is unknown and the owners whose whereabouts are known or a majority thereof consent; the heirs and devisees of deceased owners have not been determined and the Secretary consents; or where owners are so numerous it would be impracticable to obtain their consent. 25 C.F.R. § 139.3(c)(1)-(5). The regulatory scheme contemplates that an individual landowner or a majority of the landowners should be able to exercise their rights to negotiate and consent to the granting of a right-of-way.

In accordance with the federal statutes and regulations, the Landowners requested the names and mailing addresses of the other co-owners in order to communicate with them during the negotiations. The difficulty the Landowners herein have in ascertaining and communicating with all of the co-owners of their allotment is directly attributable to the unfortunate policy which the United States Government implemented in the latter part of the 19th Century. In 1887 the United States Government instituted an allotment policy to distribute trust land to individual Indians, which continued until 1934. See General Allotment Act of 1887, Ch. 119, 24 Stat. 338. As a result, Indian land became highly fractionalized so that it is likely that each allotment will have many co-owners with each owning varying percentages of interests.²

² The allotment policy proved disastrous for Indian Landowners retaining ownership and the ability to manage their land because, as the land was divided to multiple heirs due to the lack of wills, the ownership became increasingly fractionalized with some allotments owned by dozens of owners without the majority interest necessary to exercise management and control of their lands. As a result, the BIA, by default, is given authority to make decisions

Freedom of Information Appeal
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Page 4

It is exceedingly difficult, if not altogether impossible, for the Landowners herein to negotiate a right-of-way unless they have the names and mailing addresses of the other co-owners so they can join together in the negotiations either directly or grant their consent to the other owners to represent their interests in the negotiations. The regulations clearly contemplate that the Secretary will assist the Landowners with the negotiations by allowing all of the Landowners who want to participate to join together as a majority interest to consent to the granting of the right-of-way. Without the names and mailing addresses, this cannot be done. What is ironic in the present case is that the Bureau of Indian Affairs provided the names and mailing addresses to Idaho Power Company in order for them to mail consent forms to all of the Landowners so that the Secretary could approve the right-of-way and compensation without the Landowners participating in the negotiations but the Landowners herein who want to negotiate their own agreement are denied the opportunity to notify the other co-owners of their right to negotiate on their own and seek additional compensation than Idaho Power Company has offered.³ See Attachment

instead of the Indian Landowners. See *Babbitt v. Youpee*, ___ U.S. ___, 136 L.Ed.2d 696, 701-703 (1997) and *Hodel v. Irving*, 481 U.S. 704 (1987).

³ The BIA on the Fort Hall Reservation has continually refused to disclose the names and addresses of Indian Landowners to the co-owners of allotments so that they can negotiate their own agricultural leases with the farmers who lease their lands. See 25 C.F.R. § 162.6. In contrast, the BIA has provided the existing lessees with the names and mailing addresses of the landowners in order for them to obtain their consents to lease their land without advertiz-

Freedom of Information Appeal
May 13, 1998
Page 5

6, example of the letter mailed by Idaho Power Company to each Landowner.

The Landowners are requesting the names and mailing addresses of their co-owners in order to negotiate a higher payment for renewing the Idaho Power Company's right-of-way. In this instance, Idaho Power Company has offered to pay \$63,585 for the renewal of the 50 year right-of-way based upon the use of the land for crop production. See Attachment 8. However, the Landowners herein have retained their own expert appraiser who has determined the right-of-way is worth \$7 million, using the opportunity cost methodology, based upon the use of their land for a power transmission line and the benefit a renewal will have to Idaho Power Company. It is absurd for the Government to contend that it is protecting the interests of the other co-owners by not disclosing their names and mailing addresses when the negotiations being conducted by the Landowners herein would result in all of the co-owners receiving tens of thousands of dollars in additional compensation as a result of the Landowners' herein efforts. Fifty years ago, when the right-of-way was first granted to construct over ten miles of

ing and seeking sealed bids as required by 25 C.F.R. § 162.7. See Attachment 7 as an example where the Superintendent agreed to the illegal assignment of a cancelled lease for \$80.00 per acre despite the objections of the Landowners because it was less than the \$125.00 per acre fair market rental value. The assignment was later declared null and void and the farmer had to pay \$125.00 per acre. See 25 C.F.R. § 162.12(a). This has permitted the existing lessees to have an illegal preference and resulted in the rental rate paid for the land to be less than fair market value because of the lack of competition. See 25 C.F.R. § 162.5(e).

Freedom of Information Appeal
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Page 6

transmission line, the Government gave away the Indian land for only \$831.50. See Attachment 9. The Landowners herein are requesting the names and mailing addresses of the other co-owners in order to notify them that they should not consent to Idaho Power Company's offer and to encourage them to join the other co-owners in the negotiations for higher compensation. The Landowners do not want the Superintendent to once again give away a very valuable use of their land for less than 1% of its actual value.

The United States Federal District Court for the District of Idaho has recently determined in similar but less compelling circumstances that 5 U.S.C. § 552(b)(6) would not prevent the state of Idaho from seeking disclosure of the names and cities of residence of lease or permit holders of United States Forest Service land in Idaho. See Attachment 10, *State of Idaho v. U.S. Forest Service*, Civil No. 97-0230-S-BLM, December 9, 1997. The Court distinguished *U.S. Dept. of Defense v. F.L.R.A.*, 510 U.S. 487 (1994) upon which the Landowners' request in this matter was denied.⁴

Given the statutory and regulatory provisions providing the Landowners with the right to negotiate and consent to the granting of a right-of-way on their land, the fact that the Landowners own undivided interests in the land with the co-owners whose names and mailing addresses they seek, and the United States' trust responsi-

⁴ The Court awarded the State \$2,590 in attorney fees finding the Defendants' position was not substantially justified. Attachment 11.

Freedom of Information Appeal
May 13, 1998
Page 7

bility and fiduciary duty to all Indian Landowners, disclosure is warranted and the exemption should be not applied. See *United States v. Mitchell*, 463 U.S. 206, 224-227 (1983).

[T]he Indian allottees are in no position to monitor federal management of their lands on a consistent basis. Many are poorly educated, most are absentee owners, and many do not even know the exact physical location of their allotments. Indeed, it was the very recognition of the inability of the Indians to oversee their interests that led to federal management in the first place. A trusteeship would mean little if the beneficiaries were required to supervise the day-to-day management of their estate by their trustee or else be precluded from recovery for mismanagement.

Id. at 227.

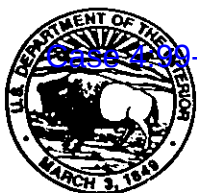
Wherefore, the Landowners request the decision to deny disclosure be reversed and the names and mailing addresses of all the co-owners affected by the negotiations for the right-of-way be released under the Freedom of Information Act.

Respectfully submitted,


Howard A. Belodoff
Attorney for Landowners

HAB:B
Enc.

cc: Fort Hall Landowners Alliance



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

Howard A. Belodoff, Esquire
Idaho Legal Aid Services
310 North 5th Street
Post Office Box 913
Boise, Idaho 83701-0913

Dear Mr. Belodoff:

This responds to your May 13, 1998, Freedom of Information Act (FOIA) appeal (FOIA 98-143), filed on behalf of the Fort Hall Landowners Alliance, Inc. (Alliance). Your appeal pertains to the denial, on the basis of exemption (6) of the FOIA, of your February 13, 1998, FOIA request to the Bureau of Indian Affairs (BIA), Fort Hall Agency, for the names and addresses of individual Indian landowners within a right-of-way held by the Idaho Power Company. In your FOIA request, you advised that BIA has provided the withheld information to the Idaho Power Company. The Department regrets this late response but the need for thorough coordination and consultation with other offices caused unavoidable processing delays.

Your request on appeal is denied. The Office of the Solicitor, in reviewing your appeal, has recommended that the Department deny your appeal, on the basis of exemption (6) of the FOIA. The Department has adopted this recommendation as described in the enclosed copy of an August 31, 1998, memorandum from the Associate Solicitor - Division of General Law, to the Assistant Secretary - Policy, Management and Budget.

The withheld information is part of a Privacy Act system of records (Indian Land Leases-Interior, BIA-5, 48 FR 41101 (09-13-83)). Under the Privacy Act, personal information contained in a system of records may not be released to third parties without the prior consent of the individuals to whom the records pertain, unless disclosure of the records is required under the FOIA or one of 12 conditions of disclosure is present (5 U.S.C. 552a(b)). None of the Privacy Act's 12 conditions allowing disclosure is applicable to your request. Thus, unless disclosure is required under the FOIA, the Department of the Interior is prohibited by the Privacy Act from releasing the information to you.

Exemption (6) allows an agency to withhold

personnel and medical files and similar files
the disclosure of which would constitute a
clearly unwarranted invasion of personal
privacy (5 U.S.C. § 552(b)(6)).



In invoking exemption (6), it is necessary to determine whether release of the information would constitute a clearly unwarranted invasion of the individual's privacy. The determination requires a balancing of the privacy interest at stake against the public interest to be served by disclosure.

A requester's assertion of need cannot be taken into account in determining what should be released under the FOIA. Landowners have a privacy interest in controlling access to their names and mailing addresses. Disclosure of this information to you would open the door for disclosure to all requesters, including environmental organizations, commercial advertisers and solicitors. These individuals have a right to decide whether or not his/her information should be publicly disclosed.

The second phase of the balancing test is to determine if there is a public interest in disclosure. Although the Alliance may have an interest in obtaining the names and mailing addresses of the landowners, you have not demonstrated that there is any known interest by the general public to be served in the release of this information. Furthermore, the release of this information would not, in itself, shed light on BIA's performance of its statutory duties. Thus, the privacy interest to be served by withholding the landowners' names and mailing addresses, outweighs a public interest, if any, in a release.

In 1996, BIA released a list of landowner names and mailing addresses to the Idaho Power Company. This was an error by BIA, and it has advised the Department that there has been no subsequent disclosure of this information. The erroneous release of this information to the Idaho Power Company does not waive the restrictions of the FOIA and Privacy Act; and the Department is of the opinion that BIA should not be required to violate the landowners' privacy interests by continued disclosure of their names and mailing addresses.

As you are aware, BIA has made an attempt to provide the Alliance with as much information as was provided to the Idaho Power Company, without violating the landowners' privacy interests. In this regard, BIA sent letters to 172 landowners advising them of your FOIA request, and requested that they notify BIA if they wished to have their names and mailing addresses released to you. By letters dated June 8, 1998, June 12, 1998, July 23, 1998, and August 17, 1998, BIA released to you 56 names and mailing addresses of landowners from whom BIA received disclosure authorizations. The BIA has advised the Department that it advised you that if additional authorizations are received, the names and mailing addresses will immediately be forwarded to you.

The Department finds that sound grounds exist for the continued withholding of the names and mailing addresses of the landowners, on the basis of exemption (6) of the FOIA.

To assist you in understanding the legal basis for this decision, enclosed is a copy of an August 31, 1998, memorandum, from the Associate Solicitor - Division of General Law to the Assistant Secretary - Policy, Management and Budget. Attached to this memorandum is a brief discussion of case law as it pertains to exemption (6) of the FOIA.

This is a final determination on your appeal for this Department. You have a right to obtain judicial review of this decision in the United States District Court for the District in which the withheld records are located, or in which you reside or have your principal place of business, or in the United States District Court for the District of Columbia.

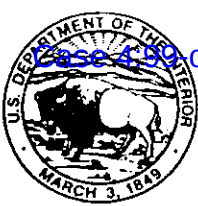
In addition to myself, the officer responsible for this decision is Karen Maloy Sprecher, Associate Solicitor - Division of General Law.

Sincerely,

William W. Wolf

William W. Wolf
Freedom of Information Act
Appeals Officer

Enclosures



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

AUG 31 1998

Memorandum

To: Assistant Secretary - Policy, Management and Budget
(Attention: Department FOIA Appeals Officer)

From: Karen Maloy Sprecher, Associate Solicitor- Division of General Law *Billant for*

Subject: Freedom of Information Act Appeal of Howard A. Belodoff
(No. 98-143)

This memorandum provides the views of the Office of the Solicitor on the Freedom of Information Act (FOIA) Appeal (Appeal) of Howard A. Belodoff, Idaho Legal Aid Services. Mr. Belodoff, representing the Fort Hall Landowners Alliance (Alliance), seeks the names and addresses of individual Indian landowners (landowners) within a right-of-way held by the Idaho Power Company. The Bureau of Indian Affairs (BIA) denied Mr. Belodoff's FOIA request pursuant to FOIA exemption (6). For the reasons discussed below, we recommend that the Appeal be denied.

Background

On February 13, 1998, Mr. Belodoff submitted a FOIA request to the Fort Hall Agency, BIA, stating in part:

I will be representing individual landowners' interests at the request of the Fort Hall Landowners Alliance, Inc. (FHLA) in the negotiations for the renewal of Idaho Power Company's right of way for its transmission line in accordance with 25 CFR § 169.3(b) and 169.19. Mrs. Werelus has indicated that the BIA has refused her request under the Privacy Act for the names and mailing addresses of the individual landowners whose property is within the right of way. It appears the BIA has provided Idaho Power Company with the names and addresses because they have directly contacted the landowners seeking consent for their renewal. I do not understand how the BIA can assert the names and addresses cannot be disclosed to the FHLA but can be disclosed to Idaho Power Company. Perhaps you can provide me with an explanation of why the Privacy Act applies to the FHLA but not to Idaho Power.

I am enclosing a recent decision the state of Idaho received from the United States District Court after the Department of Agriculture refused to provide similar information to it. The Court held that the Privacy Act was not applicable in that situation. In my opinion the Indian landowners have a far stronger argument for disclosure than the state had for disclosure in their case because of their legal right to negotiate for the renewal of the right of way, the fiduciary duty the BIA owes to them, and the BIA's voluntary disclosure to the Idaho Power Company. . . .

On April 23, 1998, the Portland Area Office, BIA, responded to Mr. Belodoff's FOIA request, stating in part:

Based on our review, the Bureau of Indian Affairs, in 1996, did release a list to Idaho Power Company. While we are sympathetic to your argument that this prior disclosure requires release of the information to the landowners association, your position is not in accordance with the requirements of the Privacy Act. This list was generated from "Indian Land Leases-Interior/BIA-5", which is a system of records covered by the Privacy Act. Under the Privacy Act, a record subject to the act may not be released without prior written consent of the individual to which it pertains unless one of 12 exceptions is met. . . .

One of the 12 exceptions mandates release of records where such release is required under the FOIA. . . We have determined that the names and addresses of the individual landowners are exempt from disclosure under Exemption (6), which permits withholding of information about individuals in "personnel, medical and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy". . . .

To summarize, your assertion that the Bureau of Indian Affairs' earlier release of the information to Idaho Power requires the release to the landowners association is not a permissible exception to the Privacy Act's non-disclosure rule. However, to avoid the perception that this agency has not treated the landowner's association fairly, the agency is willing to contact each individual landowner appearing on the list disclosed to Idaho Power to inquire whether it may release the landowner's name and address to the association. We will then release those names and addresses for which we have received written approval to your group. . . .

On May 13, 1998, Mr. Belodoff appealed the BIA's denial, stating in part:

It is exceedingly difficult, if not altogether impossible, for the Landowners herein to negotiate a right-of-way unless they have the names and mailing addresses of the other co-owners so they can join together in the negotiations either directly or grant their consent to the other owners to represent their interests in the negotiations. The regulations clearly contemplate that the Secretary will assist the Landowners with the negotiations by allowing all of the Landowners who want to participate to join together as a majority interest to consent to the granting of the right-of-way. Without the names and mailing addresses, this cannot be done. What is ironic in the present case is that the Bureau of Indian Affairs provided the names and mailing addresses to Idaho Power Company in order for them to mail consent forms to all of the Landowners so that the Secretary could approve the right-of-way and compensation without the Landowners participating in the negotiations but the Landowners herein who want to negotiate their own agreement are denied the opportunity to notify the other co-owners of their right to negotiate on their own and seek additional compensation than Idaho Power Company has offered. . . .

Applicable Law

Privacy Act. The withheld information is contained in a system of records maintained by the BIA (Indian Land Leases-Interior, BIA-5, 48 Fed. Reg. 41101 (9-13-83)). Accordingly, these records are subject to the Privacy Act's restrictions on disclosure. Because none of the Privacy Act's eleven other conditions allowing disclosure is applicable to the instant Appeal, the question to be addressed is whether disclosure of the information is required under the FOIA. 5 U.S.C. § 552a(b)(2).

FOIA Exemption (6). Exemption (6) allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The threshold requirement of exemption (6) that the information be contained in a personnel, medical or similar file has been construed by the United States Supreme Court (Supreme Court) to extend the coverage of the exemption to any agency records that can be identified as applying to that individual. U.S. Department of State v. Washington Post Co., 456 U.S. 595 (1982) (Washington Post); New York Times Co. v. NASA, 920 F.2d 1002 (D.C. Cir. 1990) (New York Times v. NASA).

When disclosure of information about a particular individual is requested, under exemption (6) it is necessary to determine whether release of the information would constitute a clearly unwarranted invasion of the individual's privacy. Washington Post; New York Times v. NASA. The determination requires a balancing of the privacy interest at stake against the public interest to be served by disclosure. Department of the Air Force v. Rose, 425 U.S. 352 (1976); U.S. Department of Defense v. Federal Labor

Relations Authority, 510 U.S. 487 (1994) (DOD).

The nature of the balancing process was considered by the Supreme Court in Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989) (Reporters Committee). Reporters Committee continues to be a leading case on the balancing process and was followed by the Supreme Court in DOD. Although Reporters Committee involved the balancing process under exemption (7)(C), it established several important guiding principles that are equally applicable to exemption (6):

First, the Supreme Court stated that substantial privacy interests can exist in personal information even though the information has been made available to the general public at some place and point in time. 489 U.S. at 762, 780. The Supreme Court applied a “practical obscurity” standard, observing that if such items of information actually “were freely available, there would be no reason to invoke the FOIA to obtain access to them.” Id. at 762.

Second, it is now beyond doubt that the identity of a FOIA requester cannot be taken into account in determining what should be released under the FOIA, except where the requester’s interests are those that would be protected by withholding. In this latter instance information that would not be available to another person may be released to the requester without violating the requester’s privacy interests. Id. at 771. Thus, a requester’s assertions of need are not relevant in determining whether to release information under the FOIA.

Third, the determination of whether the public interest is served by disclosure must turn on the nature of the requested document and its relationship to “the public interest generally,” rather than the particular purpose for which the document is being requested. Id. at 771, 772; DOD, 510 U.S. at 496; Bibles v. Oregon Natural Desert Association, 117 S.Ct. 795 (1997) (ONDA).

Fourth, the Supreme Court recognized that in order for an identified public interest to be considered in the balancing process, that public interest must fall within the “core purpose of the FOIA,” Reporters Committee, 489 U.S. at 774, which is to “shed light on an agency’s performance of its statutory duties,” Id. at 773. Thus the release of information which would reveal “little or nothing about an agency’s own conduct” does not meet this public interest standard. Id. at 772; ONDA, 117 S.Ct. at 795.

Fifth, at least under exemption (7)(C) (permitting the withholding of records compiled for law enforcement purposes where the release could reasonably be expected to result in an unwarranted invasion of personal privacy) agencies may engage in “categorical balancing” to determine that a certain type of information always is protectible under the exemption, “without regard to individual circumstances.” Reporters Committee, 489

U.S. at 780. "Categorical balancing" was applied to exemption (6) withholdings in Reed v. National Labor Relations Board, 927 F.2d 1249, 1252 (D.C. Cir. 1991), cert. denied, 502 U.S. 1047 (1992) ("individual circumstances [may be] disregarded when a case fits into a genus in which the balance characteristically tips in one direction," (quoting from Reporters Committee)).

Discussion and Analysis

Privacy Interest. It is clear that the landowners have a privacy interest in controlling access to their names and mailing addresses. Disclosure of the information to Mr. Belodoff would open the door for disclosure to all requesters, including environmental organizations, commercial advertisers and solicitors. Under these circumstances, there is a likelihood of substantial intrusion on personal privacy by way of unwanted solicitations. In his Appeal, Mr. Belodoff argues that "[I]ndian Landowners who reside on the Fort Hall Indian Reservation do not receive home delivery but only have post office boxes at the Fort Hall United States Post Office. The fact that the home addresses of the Landowners who reside on the Fort Hall Indian Reservation are not requested lessens the privacy interests which apply to this request." The courts have consistently held that individuals have at least a minimal privacy interest in their home addresses. DOD; Dep't of Agriculture v. FLRA, 836 F.2d 1139 (8th Cir. 1988); Minnis v. Dep't of Agriculture, 737 F.2d 784 (9th Cir. 1984). In the D.C. Circuit, the Court of Appeals concurred with the other circuits that individuals have a privacy interest in their home addresses, reasoning that many individuals take precautions to keep their whereabouts private, such as the use of post office boxes and unlisted telephone numbers. National Association of Retired Federal Employees v. Horner, 879 F.2d 873, 875-78 (D.C. Cir. 1989). Because we have determined that the landowners have a privacy interest in their names and mailing addresses, our analysis turns to whether there is a public interest in disclosure of the information.

Public Interest. In Reporters Committee, the Supreme Court limited the concept of public interest under the FOIA to the "core purpose" for which Congress enacted it: To "shed [] light on an agency's performance of its statutory duties." Information that does not directly reveal the operations or activities of the federal government, the Court has stressed, "falls outside the ambit of the public interest that the FOIA was enacted to serve." The Supreme Court now has unequivocally prohibited consideration of a requester's purpose in seeking requested documents as part of the "public interest" side of the balancing test. Instead, the type of "public interest" recognized in Reporters Committee, one where disclosure of information "sheds light on an agency's performance of its statutory duties," has now been confirmed by DOD and ONDA to be the only cognizable public interest for FOIA purposes. Reporters Committee, 489 U.S. at 773; DOD, 510 U.S. at 495, 496; ONDA, 117 S.Ct. at 795. If an asserted public interest is found to qualify under this standard, it then must be accorded some measure of value so that it can be weighed against the threat to privacy.

Mr. Belodoff argues that under the State of Idaho v. United States Forest Service, Civ. No. 97-0230-S-BLW (D. Idaho, December 9, 1997) (State of Idaho) case, the names and mailing addresses involved in the instant Appeal should be released. In State of Ohio, while the court concluded that the individual permit holders had a privacy interest in keeping confidential their names and home addresses, it found that the public interest outweighed the privacy interest in disclosure of the permittees' names and cities of residence. The court also concluded that there was no public interest in disclosure of the permittees' street addresses and, therefore, found that they were protected from release under FOIA exemption (6). In concluding that there was a substantial public interest in disclosure of the permittees' names and cities of residence, the court reasoned that:

Disclosure of these facts is a prerequisite to determining whether the Forest Service is granting permits on the basis of improper influence. Disclosure of names is also one of the most reliable ways to determine if permit holders have a past history of environmental abuses. Name disclosure--and the protection from mistaken identity that comes from city disclosure--thus sheds light on two of the Forest Service's crucial duties: (1) the duty to be fair in issuing permits; and (2) the duty to protect the environment.

State of Idaho, mem. op. at 7-8.

Unlike the public interest identified in State of Idaho, in the instant Appeal the only interest identified by Mr. Belodoff is the interest of the Alliance in contacting the landowners to inform them of negotiations being conducted with the Idaho Power Company for the renewal of a right-of-way for a power transmission line. Mr. Belodoff states that "[T]he Landowners herein are requesting the names and mailing addresses of the other co-owners in order to notify them that they should not consent to Idaho Power Company's offer and to encourage them to join the other co-owners in the negotiations for higher compensation." Mr. Belodoff has not identified any qualifying public interest in disclosure of the names and mailing addresses of the landowners, and we are aware of none. The names and mailing addresses themselves would tell the public nothing directly about the BIA's performance of its statutory duties. Thus, there is simply no weight on the disclosure side of the balancing test. Accordingly, under Reporters Committee, we find that there is no public interest to be served by disclosure of the names and mailing addresses of the landowners. We also find that State of Idaho provides no support for release of the information.

Waiver. We now turn to the issue of whether the BIA's release of the landowner names and mailing addresses to the Idaho Power Company waives the ability of the BIA to withhold the information from Mr. Belodoff. A waiver is not necessarily found when an agency makes an entirely mistaken disclosure. See Martin Marietta Corp. v. Dalton, No.

94-2702, 1997 WL 459831, at *3 (D.D.C. Aug. 8, 1997) (finding no waiver under Exemption (4) where prior release of data in contract had been made); Public Citizen Health Research Group v. FDA, 953 F. Supp. 400, 404-06 (D.D.C. 1996) (holding no waiver where material accidentally released and information not disseminated by requester); Nation Magazine v. Department of State, 805 F. Supp. 68, 73 (D.D.C. 1992) (dicta) (“[N]o rule of administrative law requires an agency to extend erroneous treatment of one party to other parties, ‘thereby turning an isolated error into a uniform misapplication of the law.’” (quoting Sacred Heart Medical Ctr. v. Sullivan, 958 F.2d 537, 548 n.24 (3d Cir. 1992))); Astley v. Lawson, No. 89-2806, slip op. at 20 (D.D.C. Jan. 11, 1991) (inadvertent placement of documents into public record held not to waive exemption where it was remedied immediately upon agency’s awareness of mistake).

It is clear that the BIA erred when it released, in 1996, a list of landowner names and mailing addresses to the Idaho Power Company. The BIA recognizes its error, and advises us that there has been no subsequent disclosure of this information. While it is unfortunate that the BIA released the names and mailing addresses to the Idaho Power Company, we do not believe that the BIA should be required to violate the landowners’ privacy interests by continued disclosure of their names and mailing addresses. The BIA has made an attempt to provide the Alliance with as much information as was provided to the Idaho Power Company, without violating the landowners’ privacy interests. In this regard, the BIA sent letters to 172 landowners advising them of Mr. Belodoff’s FOIA request. The letters advised the landowners of Mr. Belodoff’s interest in contacting them regarding the right-of-way negotiations, and requested that they notify the BIA if they wished their names and mailing addresses released to Mr. Belodoff. By letters dated June 8, 1998, June 12, 1998, July 23, 1998, and August 17, 1998, the BIA released to Mr. Belodoff 56 names and mailing addresses of landowners from whom the BIA received disclosure authorizations. The BIA has advised Mr. Belodoff that if additional authorizations are received, the names and mailing addresses will be immediately forwarded to him.

Conclusion

It is our opinion that the landowners clearly have a privacy interest in their names and mailing addresses. Under Reporters Committee, DOD, and ONDA there is no qualifying public interest in disclosure of the information. Therefore, on balance, we find that the privacy interests of the landowners outweighs the lack of public interest in disclosure of their names and mailing addresses. It is our conclusion that exemption (6) protects the information from disclosure, and sound grounds exist to invoke this exemption. Further, it is our opinion that the BIA has not waived its ability to withhold the landowner names and mailing address from Mr. Belodoff. Because the names and mailing addresses are not required to be released pursuant to the FOIA, the Privacy Act prohibits the disclosure of this information to Mr. Belodoff. For the above reasons, we recommend that the Appeal be denied.

For further information concerning this memorandum, you may contact Barbara Abate at (202) 208-5216.

cc: Stephanie Lynch, SOL-Portland